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Filed May 19, 1964

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1179-64

AYAKO HONDA, 1576 Valota Road, Redwood City, California; KANEKICHI MURAKAMI, 450 North 12th West, Salt Lake City, Utah; KANEYO SATO, P. O. Box 242, Ontario, Oregon; TOMI TSUJI, 6828 Beacon Avenue, Seattle 8, Washington; GENSUKE YOSHIDA, 247 W. 72 Street, New York, New York 10023, for themselves and on behalf of all others similarly situated, *Plaintiffs*,

v.

ROBERT F. KENNEDY, Attorney General of the United States, Department of Justice Building, Washington 25, D.C., *Defendant.*

COMPLAINT FOR DECLARATORY AND OTHER RELIEF

1. This Court has jurisdiction under 5 U.S.C. 1009, 28 U.S.C. 1331, 1357, and 2201, and 50 USC Appx. 34f, as amended.

2. Plaintiffs are former depositors in the Yokohama Specie Bank, Ltd., who had assets on deposit in said bank on December 7, 1941. They then held identically-worded yen Certificates of Deposit issued to them in the United States in exchange for the deposit of dollars in said bank, which Certificates were redeemable upon demand in dollars at the offices of the bank in the United States or in yen at the offices of the bank in Japan.

3. Plaintiffs file this action on their own behalf and on behalf of all others similarly situated. The persons so situated, several thousand in number, are so numerous as to make it impracticable to bring them all before the Court, and each of them has an identical claim against the funds

of said bank seized by the United States Government, based upon identical yen deposit certificates, differing only as to date, amount, name of depositor and amount of interest. Hereinafter, unless otherwise stated, the term plaintiffs will be used to describe the entire class on whose behalf this suit is filed.

4. Defendant, Robert F. Kennedy, is the Attorney General of the United States. He is a successor in office to the Alien Property Custodian who on December 7, 1941 seized, and in 1943, pursuant to the Trading with the Enemy Act as amended (50 USC Appx. 34, 620), vested certain properties of the Yokohama Specie Bank, Ltd., including the funds plaintiffs had on deposit therewith. Unless otherwise stated, the term defendant will be used hereinafter to refer to the named defendant and/or his predecessors in office or the Office of Alien Property, as the context may require.

5. Pursuant to the Trading with the Enemy Act, plaintiffs submitted timely debt claims to defendant on account of the seizure of their assets as aforesaid.

6. Defendant thereafter recognized the validity of plaintiffs' claims by written communications in 1958 and 1959. A letter typical of that sent to each of the plaintiffs is attached hereto as Exhibit "A" and by this reference made a part hereof. Defendant, however, proposed to pay at the ratio of 361.55 yen per dollar, rather than return to plaintiffs their money which defendant had seized at the ratio of approximately 4 yen per dollar (23.4 cents per yen), which was the true and accurate ratio of dollars to yen and the appropriate ratio for measuring the dollar value of plaintiffs' holdings and just claims under said Act.

7. Plaintiffs did not, in 1958 and 1959, submit for payment in the proposed reduced amounts, their original certificates, as they were invited to do by the letters of defendant (see Exhibit A), because (a) the proposed amount of payment was legally erroneous, inadequate and arbitrary (representing but 1.18 per cent of their true claim), as hereinabove set forth in paragraph 6; because (b) they were unwilling to surrender at that time their original certificates constituting the physical evidence of their right and claim; because (c) they feared that submission of their

original certificates for payment of the proposed legally erroneous amount would constitute acquiescence in the adequacy and legality thereof, and because (d) many of the plaintiffs were and are old people who could not read English and did not understand the communications of the defendant.

8. The Office of Alien Property had, and has, photostatic copies of each of plaintiffs' Certificates. Such photostatic copies of each of plaintiffs' Certificates were required by said Office as a condition of the timely filing and consideration of the claims of all claimants; the Office of Alien Property at all times had, and has, access to or possession of the books of the Yokohama Specie Bank, Ltd. which showed and show who were and are the holders of the Deposit Certificates, the numbers and amounts thereof; and the said Certificates were and are non-negotiable. It was not necessary, therefore, as a condition of the allowance of the plaintiffs' claims, as distinguished from the payment thereof, that the Office of Alien Property have in hand the original Certificates.

9. Subsequently the defendant dismissed each of the plaintiffs' debt claims for failure to file original Certificates, as requested in the communications from defendant to plaintiffs, an example of which is attached hereto as Exhibit A.

10. Pursuant to Section 34f of the Trading with the Enemy Act as amended (50 USC appx. 34f), on May 11, 1961, defendant published a schedule of claims proposed to be paid from assets of the Yokohama Specie Bank, Ltd., none of which included plaintiffs' claims. Thereafter, beginning about August 1, 1961, he began to mail said schedules to the various debt claimants. On August 13, 1961, a class suit on behalf of persons thus scheduled for payments was filed in this Court in the case of *Abe* v. *Kennedy*, Civil Action Number 2529-61, to test the adequacy of the proposed yen-dollar ratio under said schedule, which constituted the same issue then existing between plaintiffs herein and defendant. Plaintiffs were not included among the class on whose behalf said suit was filed.

11. On or about April 27, 1964 the *Abe* suit was settled

by an order of this Court awarding payment to the plaintiffs therein of the principal of their claims at a ratio of approximately 23 cents per yen. Said settlement did not exhaust the amount of money held by defendant and defendant still holds funds in sufficient amount to pay plaintiffs on the same basis as said settlement. On information and belief, plaintiffs allege that the present administrative policy of defendant is to pay all valid claims based upon seizure of the assets in the Yokohama Specie Bank, Ltd., in the ratio of approximately 23 cents per yen.

12. Plaintiffs, as set forth above in paragraph 6, have proved to the satisfaction of the defendant that they hold valid debt claims on account of the seizure of their assets in the Yokohama Specie Bank, Ltd. Plaintiffs allege on information and belief, that nevertheless defendant declines to pay the just debt claims of plaintiffs solely because original certificates were not by them submitted to defendant in 1958 and 1959, as above set forth in paragraph 7.

13. The requirement imposed by defendant for the submission of original certificates as a prerequisite to award of the proposed legally inadequate and erroneous amount, was arbitrary and unauthorized. Defendant now recognizes by virtue of the conversion rate by him employed, as set forth in paragraph 11 above, the error of his previously proposed conversion ratio. Refusal now to pay plaintiffs' valid debt claims solely for their failure to comply with the defendant's previous arbitrary and unauthorized demand for original certificates, as aforesaid, is injurious, inequitable, contrary to the statutory rights of plaintiffs and deprives them of property without due process of law.

14. Plaintiffs were and are ready, willing and able to surrender their original Certificates as a condition of receiving award or payment of their claims on the conversion formula set forth in paragraph 11 above, at such time as requested, noticed or ordered to do so by the defendant or by this Court.

WHEREFORE, plaintiffs pray that the Court declare their rights herein, specifically their right not to have their debt claims rejected on account of the unlawful requirement earlier imposed for submission of original certificates; that

they be paid in the same conversion ratio as plaintiffs in *Abe* v. *Kennedy*, No. 2529-61, and for other appropriate relief.

JOSEPH L. RAUH, JR.,
JOHN SHARD,
1625 K Street, N.W.,
Washington 6, D.C.

A. L. WIRIN,
FRED OKRAND,
257 South Spring Street,
Los Angeles 12, California.

MARSHALL ROSS,
139 South Beverly Drive,
Beverly Hills, California,
Attorneys for Plaintiffs.

EXHIBIT A

REGISTERED MAIL
RETURN RECEIPT REQUESTED

Ayako Honda
1576 Valota Road
Redwood City, California

Dear Sir:

Reference is made to the above-numbered debt claim which has been filed with this Office with respect to the insolvent account of the Yokohama Specie Bank, Ltd. The claim is based upon yen certificates of deposit.

The Director of this Office decided on November 13, 1957, *In the Matter of Kunio Abe, et al.*, Claim No. 55507, Docket No. 55 D 72, which decision the Attorney General has declined to review, that yen certificates of deposit issued by the Yokohama Specie Bank, Ltd., and the Sumitomo Bank, Ltd. are obligations payable in yen in Japan, and that claims based on such certificates of deposit are to be allowed and paid in United States currency at the post war rate of exchange in accordance with the "Judgment Day" rule set forth in *Deutsche Bank* v. *Humphrey*, 272 U.S. 517 (1926). Thus, the current rate of exchange of 361.55 yen to one dollar must be used in converting the yen into a dollar amount. Interest is allowable from the date of deposit to the date of payment.

Therefore, if you submit your original certificates of deposit to this Office, I can recommend your claim for allowance in the sum of $9.09 plus interest. If you have lost your certificates, you should prepare a statement setting out that the deposits were made as alleged in the Notice of Claim form, giving the numbers of the certificates, the dates of the deposits, and the branch of the Bank at which the certificates were purchased. You should also state that you have not received payment from the Bank or accepted renewed certificates of deposit. This statement should be signed and sworn to by you before a Notary Public and forwarded to this Office in support of your claim.

Payment of your claim, however, will not be made immediately. Under the procedures set forth in section 34(f) of the Trading with the Enemy Act, as amended (50 U.S.C. App. 34(f)), it is necessary that all of the approximately 9000 claims filed against the Yokohama Specie Bank, Ltd. be reviewed and a schedule issued showing the proposed payments before any payments can be made. Within sixty days after the issuance of the schedule, any aggrieved claimant may file in the District Court of the United States for the District of Columbia a complaint for review of such schedule, naming the Attorney General as defendant. If no complaint for review is filed, payments will be made in accordance with the schedule.

Advice received by this Office is to the effect that yen certificate of deposit accounts are carried on the books of the Yokohama Specie Bank, Ltd. in Japan, and the funds may be withdrawn in that country or transferred to the Bank of Tokyo, Ltd. Under the circumstances, you may with to utilize the funds in Japan rather than await settlement by this Office. If this is done, the Notice of Claim filed with this Office should be canceled by signing and mailing the enclosed Notice of Cancellation of Claim card.

If, however, you wish to maintain your claim with this Office you are requested to submit the original certificates of deposit or the notarized statement as to why they cannot be forwarded. In the event you object to the allowance of your claim in the amount stated above, you should submit the certificates to this Office within the next forty-five days and file a statement specifying your objections, together with the reasons in support thereof. Upon receipt of your objections, if I consider them to be without merit, I shall apply to the Director of this Office, pursuant to section 502.25(1) of the Rules of Procedure for Claims, a copy of which is enclosed, for the entry of an Order allowing your claim in the principal amount stated above, plus interest, and dismissing any portion over and above that amount on the ground that there is no debt due and owing to you by the Yokohama Specie Bank, Ltd. in excess of that amount. In acting upon my application, the Director will consider the statement of objections that you may have submitted.

On the other hand, if within the next forty-five days you do not submit the original certificates of deposit or a statement explaining why they cannot be forwarded, I shall conclude that the claim has been abandoned in its entirety and, without further notice to you, shall apply to the Director for the entry of an Order dismissing the claim on the ground of abandonment, pursuant to section 502.25(g) and (i) of the Rules of Procedure for Claims.

To recapitulate:

1. If you wish to maintain your claim with this Office, you should within forty-five days forward the original certificates of deposit and, if you wish to do so, file a statement of your objections to the allowance of the claim in the amount stated above.

2. If you wish to maintain your claim but do not have the original certificates of deposit, you should within forty-five days submit a statement, signed and sworn to before a Notary Public, giving the details of the deposits and stating that you have not received payment or renewed certificates. If you wish to do so, you may also file a statement of your objections to the allowance of the claim in the amount stated.

3. I shall then apply to the Director for an Order allowing your claim in the principal amount stated above, plus interest, and dismissing any portion over and above that amount. Where objections have been filed, they will be submitted to the Director for his consideration in acting upon your claim.

4. If, within forty-five days, you do not submit the original certificates of deposit or an explanation as to why you cannot forward them, I shall conclude that the claim has been abandoned and shall apply to the Director for an Order dismissing the claim on that ground.

5. If you prefer to utilize the funds in Japan, you should sign and mail the enclosed Notice of Cancellation of Claim card in order to clear the records of this Office.

Please note that the original certificates must be submitted; photostatic copies cannot be substituted.

Sincerely yours,

ARTHUR R. SCHOR,
Chief, Claims Section,
Office of Alien Property.

Enclosures

cc: Wirin, Rissman & Okrand,
257 South Spring Street,
Los Angeles 12, California.

Filed January 8, 1965

AFFIDAVIT OF KYUJI HOZAKI

STATE OF CALIFORNIA,
County of Los Angeles, ss:

I, KYUJI HOZAKI, being first duly sworn, depose and say:

My wife, Haruyo, and I were both born in Japan, she in 1896, I in 1897. Neither of us can read English. We are both now United States citizens, becoming such as soon as we were able, after the law was changed.

My claim with the Office of Alien Property for the return of the money I deposited with the Yokohama Specie Bank befor- the war is number 47812 and my wife's is number 47680.

While I don't remember the details, I do remember our receiving a letter or letters from the Office of Alien Property, which I believe were read to us, offering to pay us a ridiculous fraction of the amount of money we had deposited and asking us to send in our original certificates. I believed the purpose of the letter was that if we were agreeable to accepting the small amount we should send in the originals, but I did not understand this to be final nor to mean that if we did not accept, we would get nothing. I thought that there would be more proceedings.

I recall we received notices that our claims were dismissed, but, again I believed that a law suit which I had heard was filed in Washington, D.C. was for all yen claimants and would protect us all. I could not believe that in the end the Government would try to keep from us the money we had deposited.

The moneys we had deposited with the Yokohama Specie Bank along with that we deposited in the Sumitomo Bank which, I understand, is completely lost because the Government has paid all the money it seized from that bank, a total of about $2,000.00, represented, save for a deposit of about $400.00 with the Security-First National Bank, all the life savings we had. When we were evacuated I was forced to sell my barber shop for $200.00 which after the

evacuation I bought back for $2,500.00 which I borrowed in order to be able to do. I received about $[illegible],000.00 for my evacuation claim, but am out the difference.

Of my three sons, two served in the United States armed forces during World War II. My son, Toshio, was killed in Italy on April 5, 1945 while serving in the 442nd Regimental Combat Team. My other son, Teruo, also served in Europe. He was in a hospital in Germany when the war stopped. He was then sent back to the United States to a New Mexico Army Hospital and then to a veterans hospital in San Fernando Valley, California. He died of tuberculosis on June 16, 1946.

/s/ KYUJI HOZAKI.

Subscribed and sworn to before me this 19th day of November 1964.

/s/ K. MUKAEDA.
Notary Public in and for said County and State.

Filed January 8, 1965

AFFIDAVIT OF JIRO KAI

STATE OF CALIFORNIA,
County of Los Angeles, ss:

I, JIRO KAI, being first duly sworn, depose and say:

I am Japanese and understand English with great difficulty. I was born in Japan in 1883 and came to the United States in 1905. I have four children born in the United States. My two sons have served in the United States Army. James went into the service as a private in 1941 and was an officer when he left in 1946 or 1947. He served in the South Pacific and in Japan. Smiley served in Japan after the war.

I have a small claim (#12847) with the Office of Alien Property for the return of the money (about $20.00) I deposited with the Yokohama Specie Bank before the war, which was seized by the United States Government but has not been returned to me.

When I sent in my claim, I did so myself and with it I sent a picture of my certificate.

I did receive a letter from the Office of Alien Property offering me about 30¢ for my claim. I think I recall being asked to send in my original certificate by registered mail to receive this amount. For me to have done this would have cost more than I was being offered. I had heard from others that many more persons had claims similar to mine and I understood that they were all being processed together. I saw in the Japanese newspaper that a court suit was or would be filed seeking to obtain for the yen claimants the proper amount for their claims. I believed, therefore, I would be protected. With the small amount of my claim, I do not see how I could go to court myself, but at no time did I, nor did I intend to, give up my right to receive my money back.

/s/ JIRO KAI.

Subscribed and sworn to before me this 21st day of Novembe 1964

/s/ K. Mukaeda,
Notary Public in and for said County and State.

Filed January 8, 1965

AFFIDAVIT OF SHIGEO KUMASHIRO

STATE OF CALIFORNIA,
County of Los Angeles, ss:

I, SHIGEO KUMASHIRO, being first duly sworn, depose and say:

I was born in Japan in 1903 and came to the United States in 1921. I went about half way through middle (high) school in Japan.

I do not feel confident about being able to read English and so this affidavit is being translated to me before I sign it. Also, my conference with Mr. Okrand, who prepared this affidavit, was with the aid of an interpreter.

Before World War II broke out, I was living with my family in Auburn, Washington, doing truck farming. We are all persons of Japanese ancestry; my wife was born in Japan; all my children—three girls and a boy—were born in the United States. I became a citizen of the United States as soon as I could after the law was changed allowing Japanese aliens to become citizens.

My son, Howard, served with the United States Army in Korea during the early 1950s, was wounded there and awarded the Purple Heart.

Before the war I had left a small amount of money with the Yokohama Specie Bank in Seattle, Washington amounting to almost $60.00. I have filed a claim (#49706) with the Office of Alien Property for the return of this money, but have not received it, I being among those to whom the Government has refused payment on the ground that I did not sent in my original certificate of deposit when asked to do so in 1958 or 1959, although the Government has a photostatic copy of my certificate which I sent along with my claim form or shortly thereafter.

I do recall receiving a letter from the Office of Alien Property. It was very confusing to me. The letter said that the Government recognized my claim as a proper one, but only offered to return to me a few cents, something like 70 or so cents, and that to get this money I was to send in my original certificate. I did not understand that if I did

not send in the certificate I would get nothing and it would cost me almost as much as I was being offered to send the letter by registered mail.

I had understood that there were other and larger claims which had or would be filing a law suit in Washington for the recovery of a proper amount and I believed that such a suit would protect me if the Government were to pay to those persons a larger, more fair amount.

As a Japanese, I was evacuated during the War and had to leave my farming equipment behind. I did get paid for part of my loss when I filed an Evacuation Claim, but not the full amount. When I received the letter about taking such a small amount for my Yokohama Specie Bank deposit, I did not think it fair that I should be expected to take such a loss on my own money which the Government had seized.

/s/ SHIGEO KUMASHIRO.

Subscribed and sworn to before me this 18th day of November 1964

/s/ K. Mukaeda,
Notary Public in and for said County and State.

Filed January 8, 1965

AFFIDAVIT OF MICHIKO TERAO

STATE OF CALIFORNIA,
County of Los Angeles, ss:

I, MICHIKO TERAO, being first duly sworn, depose and say:

My maiden name was Michiko Hamada which is the name under which my claim number 51213 was filed with the Office of Alien Property for return of my money which was taken when the assets of the Yokohama Specie Bank were seized by the United States Government during World War II. I am one of the persons whose money the Government seeks to keep because I did not send in my original certificate of deposit although I at no time have been offered to be repaid the money I deposited with the bank and which the Government took and has.

The amount of my claim is a small one, being about 220 yen. I deposited the money with the bank in 1940 from earnings I had made from working. I was born in Long Beach, California in 1918 and when I went to work, tried to save what I could.

I married my husband, Kakuo Terao, in November, 1941. At that time my husband was in the United States Army. He is also of Japanese ancestry.

After World War II broke out, I, along with all persons of Japanese ancestry, was faced with evacuation from our home near Compton, California where my father was a farmer. My parents, with whom I was living, left before before being put in a camp and we went to Colorado where we all worked share cropping. We were not able to take all our things, just those things like bedding and personal papers and belongings which we were able to load on my father's small truck.

While we were in Colorado, my husband was sent overseas with the Army and was enroute to join the 442nd Regimental Combat Team. While he was in France, he was wounded in the spine so as to make him paralyzed from the waist down, in which condition he now and permanently

is. My husband also had served in the Pacific Theater of Operations. He was awarded the Purple Heart.

After my parents and I had returned to California after the war, I read in some newspaper about filing a claim for the return of the money I had deposited in the Yokohama Specie Bank. This was about 1947, I believe. It had been a long time, but I believe that I had accompanied my claim form with photostatic copies of my two certificates, one for 106.93 yen and the other for 113.16 yen or I later sent in such copies. In any event, I feel sure that the Office of Alien Propery had and has copies of my certificates. I knew that my claim was one of many that were being processed.

I recall receiving in about 1959, although I cannot remember the exact time and I cannot find the papers, a letter from the Office of Alien Property recognizing my claim as being a valid one, but offering to return not the amount of money I had deposited which I believe was around $50.00, but a very, very small amount, something like 60 or 70 cents. I did not believe that the amount offered was a fair one and I did not want to accept such a small amount. In trying to remember what the letter said, I do recall that I was asked to send in my original deposit certificates. It simply did not pay for me to do that. The offer, as I say, was about 60 or 70 cents, it would cost me that amount or more for photostating so that I would have copies of my certificates, plus the cost of registered mail and the regular mail would all add up to more than I would receive.

And so I did not send in my certificate, but at no time did I abandon my claim. I could not afford, in the light of even the full amount of my claim to do anything about it, but I expected that there would be further proceedings. I had heard that all of the claims were being treated as a class and I had heard that some kind of a law suit had been filed or would be filed in Washington, D.C. which I understood would, if successful, protect my right to receive my money back.

I cannot remember the exact sequence of events or even all the papers or notices I received, but I do know that I could do nothing about it because of the small amount of

money involved. However, the matter had been going on for many years and I fully expected that if recovery was allowed for others, it would also be allowed for me. I never intended to abandon my claim nor to let the Government keep my money.

/s/ MICHIKO TERAO.

Subscribed and sworn to before me this 25th day of November 1964

/s/ K. Mukaeda,
Notary Public in and for said County and State.

Filed January 13, 1965

AFFIDAVIT OF KATSUMA MUKAEDA

STATE OF CALIFORNIA,
County of Los Angeles, ss:

I, KATSUMA MUKAEDA, being first duly sworn, depose and say:

I am a person of Japanese ancestry. I was born in Japan in 1890 and have lived in the United States since 1908. I became a citizen of the United States on May 22, 1953, as soon as the law was changed and I was permitted to become a citizen. During all my life in the United States I have lived and worked in the Japanese community.

I have worked as interpreter and scrivener for Japanese persons who could not, at all or well, read or write English. I have assisted and worked with persons in the Japanese community in connection with a number of matters arising out of the fact that they were Japanese aliens in this country or because they were simply Japanese. For example, I have worked with Japanese persons in connection with their claims under the Japanese Evacuation Claims Act and in immigration matters.

I am the current president of the Japanese Chamber of Commerce of Southern California, the Executive Secretary of the Japan-America Society and I am an interpreter in the courts of Los Angeles County to translate from Japanese to English and from English to Japanese.

I have talked, both here in Los Angeles, as well as in San Francisco, California and in Honolulu, Hawaii, with many Japanese persons who are yen deposit claimants with the Yokohama Specie Bank concerning their failure to have sent in their original deposit certificates in 1958 and 1959 when the Office of Alien Property asked that the original certificates be sent in and their failure to file a law suit with regard to their claims. Also, I have general knowledge, based upon my experience in and as a part of the Japanese community, as to the feelings, fears and apprehensions which were felt when the original certificates were called

for and when the claims were denied. Based upon these conversations and experience, I say, on information and belief:

Many of the Yokohama Specie Bank yen deposit certificate holders were old people who could not read English and could not understand the communications they received from the Office of Alien Property; many of them had to rely upon other persons who themselves were not able to understand the letters; most of the claimants had never talked to a lawyer about their cases and there was a general feeling in the community that all of the claims were going to be treated alike, both the Sumitomo Bank claimants and the Yokohama Specie Bank claimants; there was knowledge in the community that a law suit had been filed in Washington and it was understood and believed that the outcome of that law suit would determine how much money the claimants received and that it would apply to all claimants not just some; most of the claimants had had experience with or had heard about the Japanese Evacuation Claims program (50 USC Appx. 1981-1987) and many of them knew generally that under that program, deadlines had been extended and even that the law itself had been changed to include persons who originally were not eligible, to be eligible for repayment of some of their losses due to the Japanese evacuation program, and that persons who previously had been denied payment, later were paid; the claimants are all persons of Japanese ancestry and so, of course, were evacuated from their homes, farms and businesses during the War solely by reason of that fact; that experience left an impact on the claimants with regard to the treatment of them by the Government; I am not a psychologist and so I cannot say what the psychological effects were, but that there were effects, I have no doubt; since the original certificates of deposit were the claimants' only direct evidence of their claim, many of the claimants were reluctant to part with this evidence, especially at a time when the Government was recognizing their claims at less than 2% of their face value, to say nothing of accumulated interest over the years; moreover, many of them felt that to send in their certificates at that time would be taken

as agreeing to accept this very small sum in full settlement and they did not want to do that; there were others whose claims were so small that to send in the originals at the figure the Government was offering would net them no return or a very small amount; as individuals, even those claimants who did not have very small claims could not afford to hire an individual lawyer in Washington or to file their own suit but had to rely on what was being done generally and many of them believed that in the end their Government would not try to keep their money but would return it.

/s/ KATSUMA MUKAEDA.

Subscribed and sworn to before me this 12th day of January 1965.

/s/ J. B. Tietz,
Notary Public in and for said County and State.

Filed September 4, 1964

ANSWER

Defendant, for his answer to the Complaint:

I. Denies each and every allegation of paragraph 1 of the complaint.

II. Denies the allegation of paragraph 2 of the complaint that the plaintiffs' certificates of deposit were redeemable upon demand in dollars at the offices of the Yokohama Specie Bank Ltd. in the United States, but except as thus expressly denied, admits the allegations of paragraph 2 of the complaint.

III. Admits the allegation of paragraph 3 of the complaint.

IV. Denies the allegation of paragraph 4 of the complaint that the vested property of the Yokohama Specie Bank Ltd. in the United States included funds that the plaintiffs had on deposit there but except as thus expressly denied admits the allegations of paragraph 4 of the complaint.

V. Admits the allegations of paragraph 5 of the complaint.

VI. Denies each and every allegation of paragraph 6 of the complaint.

VII. Denies the allegation of paragraph 7 of the complaint that the proposed payment at the ratio of 361.66 yen per dollar was legally erroneous, inadequate and arbitrary but except as thus expressly denied, denies any knowledge or information sufficient to form a belief as to each and every allegation of paragraph 7 of the complaint.

VIII. Denies each and every allegation of paragraph 8 of the complaint.

IX. Admits the allegations of paragraph 9 of the complaint, except that defendant denies that Claim No. 17796 of plaintiff, Gensuke Yoshida, was dismissed by defendant but asserts that it was withdrawn by Genuske Yoshida by Notice of Cancellation card, dated December 1, 1958; and defendant asserts that there are others in plaintiff Yoshida's situation.

X. Admits the allegations of paragraph 10 of the complaint.

XI. Admits the allegations of paragraph 11 of the complaint, except for the concluding sentence of paragraph 11, the allegations of which are denied.

XII. Denies each and every allegation of paragraph 12 of the complaint.

XIII. Denies each and every allegation of paragraph 13 of the complaint.

XIV. Denies any knowldege or information sufficient to form a belief as to each and every allegation of paragraph 14 of the complaint.

WHEREFORE, defendant demands judgment dismissing the complaint.

JOHN W. DOUGLAS,
Assistant Attorney General,
Civil Division.

ANTHONY L. MONDELLO,
ARMAND B. DUBOIS,
Attorneys for Defendant,
Department of Justice,
Offices of Alien Property.

Filed December 29, 1964

DEFENDANT'S MOTION TO DISMISS THE COMPLAINT

Defendant moves to dismiss the complaint on the ground that the Court lacks jurisdiction over the subject matter of this action because it was not commenced within the time set forth in Section 34(f) of the Trading with the Enemy Act, as amended (50 U.S.C. App. 34(f)).

/s/ JOHN W. DOUGLAS,
Assistant Attorney General.

/s /ANTHONY L. MONDELLO,
/s/ ARMAND B. DUBOIS,
Attorneys for Defendant.

Form ANC-1C
September 1946

Form approved.
Budget Bureau No. 61-R037.

UNITED STATES OF AMERICA
OFFICE OF ALIEN PROPERTY CUSTODIAN
WASHINGTON 25, D. C.

DO NOT WRITE IN THIS SPACE
Claim No. 49102
V. O. No(s). 1571
Issued
Effective
Account Nos. 23492

NOTICE OF CLAIM FOR PAYMENT OF DEBT

(Please read the instructions before filling out the form)

1. Claimant's name Kasekichi Muratani
(Person who now owns the claim, not an agent or attorney)

Have you already filed notice of claim for this debt? Yes ☐ No ☑ (*Check one*). If yes, give claim No. ____

2. Agent for service of notice (if any) —
(Person to whom notices and letters should be sent)

Address for service of notice 102 W. 1st So. Salt Lake City, Utah
(If you have no agent, give your own mailing address)

3. Identification of debtor and property:

(a) Name of debtor Yokohama Specie Bank LTD
(Person who owes the debt you want paid)

(b) Identification of property of debtor taken by Custodian:
Vesting Order(s) No. ____

Brief description Deposits at the Yokohama Specie Bank
(In general terms, as "100 shares X corporation common stock," "deposit at X Bank," "real estate in X city.")

(c) Supplemental identification:
(See Instruction D (2). If you are not able to supply information called for by both (a) and (b) of this item, state in a supplement to this item any further information that will assist the Custodian in determining whether he holds any property available for payment of claims against the debtor named; for example, other names including trade names or corporate names under which the debtor did business or kept his property, the address or addresses of the debtor, any property of this debtor that you know exists in the United States.)

4. Amount claimed (fill out each line; if inapplicable, write "none").

(a) Principal (State the original amount of the debt without interest. If the amount is unliquidated, state the amount you claim) 3838.23 $ 2,692.75

(b) Additions other than interest (Penalties, protest fees, etc.) $ None

(c) Total before deductions $ 6520.98

(d) Payments on account $ None

(e) Other deductions (Indicate nature) $ ____

(f) Total deductions $ None

(g) Net amount claimed, without interest $ 6520.98

(h) Do you claim interest? Yes ☑ No ☐ (*Check one*).

If yes, give rate, period, and amount, as follows:

3 3 percent, from May 27, 1941 (Day, month, year) to October 31, 1945 (Day, month, year) totaling $ 2,189.72

5. Nature of debt Bank deposits (2)
(In general terms, as "bank deposit," "merchandise supplied," "promissory note," "damages for contract not performed," "refund on steamship ticket.")

6. Date debt arose 7th (Day) December (Month) 1941 (Year)

7. Security you now hold, if any ____
(In general terms, as "mortgage of real estate," "pledge of stock certificates." If debt is not secured, state "not secured." If property securing your debt has been taken by the Custodian, see Instruction A.)

8. Priority claimed, if any (see sec. 34 (g) of the Act, reprinted on the instruction sheet).

Wages and salaries (sec. 34 (g) (1)) $ ____
Taxes of United States (sec. 34 (g) (2)) ____
Services, rent, goods, etc. (sec. 34 (g) (3)) ____
None ____

16—43510-1

9. Details of debt.

(State here the specific facts upon which you base the statements made in items 4, 5, 6, 7, and 8. Attach copies of any contracts, notes, or other documents upon which you rely to prove the amount, date, nature, and any security status or priority status of the debt.)

Debt(s) arose due to the freezing of the Yokohama Specie Bank Ltd. accounts (Have 2 deposits with the bank with the certificate numbers of 83115 & 84746

10. Defenses and counterclaims _____
(Here state in general terms the basis of any defense or counterclaim which the debtor has alleged, and its amount)

11. Questions for individual claimants (corporations do not answer).

Citizenship Japanese
(State name of country; if you have no citizenship, write "stateless")

Present residence address 102 W. 1st South Salt Lake City Utah
(Number) (Street) (City) (State)

Since September 1942
(Date when you began residing at this address)

(If you have resided at any other addresses at any time since December 7, 1941, state them all, with the dates of residence, at each address, in a supplement to this item.)

12. Questions for corporate claimants (individuals do not answer).

State in which incorporated _____ Date of incorporation _____

Principal office _____
(Number) (Street) (City) (State)

13. Additional questions for assignees, legal representatives, and successors in interest. (Do not answer these questions if you are the original creditor. Answer them only if you are filing a claim which originally belonged to someone else, and which you have acquired by assignment, by operation of law, or otherwise.)

(a) Original creditor's name _____

(b) Original creditor's address on date debt arose (see item 6) _____

(c) Latest date when original creditor held debt _____
(Day) (Month) (Year)

(d) If original creditor was an individual or a group of individuals, including a partnership, was he (they) a citizen of the United States or the Philippine Islands at all times he (they) held the claim? Yes ☐ No ☐ (*Check one*). If no, give country (countries) and dates of other citizenship _____

(e) If original creditor was an individual or a group of individuals, including a partnership, was he (they) a resident of the United States at all times he (they) held the claim? Yes ☐ No ☐ (*Check one*). If no, give country (countries) and dates of other residence _____

(f) If original creditor was a corporation, give State (or foreign country if not within the United States) and date of incorporation _____
(State or country)

Date of incorporation _____
(Day) (Month) (Year)

(g) Did you acquire the debt directly from the original creditor? Yes ☐ No ☐ (*Check one*). If no, use a supplement to answer questions (a) to (f) of this item, inclusive, for every other person who held the debt prior to your acquisition of it.

(h) How did you acquire the debt? _____
(In general terms, as "assignee," "heir," "executor," "reorganization of corporation," etc. Use a supplement to state details, and supply copies of documents relied on to establish your present ownership of the debt. If any such documents are court orders, the copy attached to the "original" of this form should be certified by the court or other competent official.)

(i) Are you the sole beneficial owner of the claim? Yes ☐ No ☐ (*Check one*). If no, name the other owners and state nature of their interest _____

14. If there are any other facts of which you wish to advise the Custodian, state them in a supplement to this item.

Fees of attorneys, agents, and representatives:

Name of attorney, agent, or representative	*Address*	*Amount of fee*
		$
		$

(Enter the name of each person (or firm) who has received or is to receive any fee for representing you in this claim. If there is no such person, write "none." If the amount of the total fee has been fixed, state it. If it has not, write "unknown," but the amount will have to be supplied before any payment of your claim can be made. Attorneys may submit detailed schedules of services performed and will be required to do so in appropriate cases. See section 30 of the Trading With the Enemy Act, on the instruction sheet.)

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16. I, the undersigned, swear to (or affirm) the following:

(a) (Strike out the statement that does not apply.)

I am the claimant named in item 1.
~~I am an officer of the claimant corporation holding the position of~~ _____

(b) The statements made in this notice of claim and in all supplements attached to it are known to me to be true, except as noted to be "upon information and belief."

(c) ~~I have no knowledge of any fact called for by this notice of claim (including the instructions) which is not fully set forth.~~

Kaneki[illegible] Murakami
(Signature)

KANEKICHI MURAKAMI
(Name of signer)—(Please print or typewrite)

NOTE.—It is a criminal offense to make a willfully false statement or representation to any department or agency of the United States Government. U. S. Code, Title 18, sec. 80.

16—40260-1 U.S. GOVERNMENT PRINTING OFFICE

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ABD:DRW:11
Claim No. 49102

July 29, 1959

REGISTERED MAIL
RETURN RECEIPT REQUESTED

Mr. Kanekichi Murakami,
450 No. 12th West,
Salt Lake City, Utah.

Dear Mr. Murakami:

Reference is made to the above-numbered debt claim which has been filed with this Office with respect to the insolvent account of the Yokohama Specie Bank, Ltd. The claim is based upon yen certificates of deposit.

The Director of this Office decided on November 13, 1957, *In the Matter of Kunio Abe, et al.*, Claim No. 55507, Docket No. 55 D 72, which decision the Attorney General has declined to review, that yen certificates of deposit issued by the Yokohama Specie Bank, Ltd. and the Sumitomo Bank, Ltd. are obligations payable in yen in Japan, and that claims based on such certificates of deposit are to be allowed and paid in United States currency at the post war rate of exchange in accordance with the "Judgment Day" rule set forth in *Deutsche Bank* v. *Humphrey*, 272 U.S. 517 (1926). Thus, the current rate of exchange of 361.55 yen to one dollar must be used in converting the yen into a dollar amount. Interest is allowable from the date of deposit to the date of payment.

Therefore, if you submit your original certificates of deposit to this Office, I can recommend your claim for allowance in the sum of $18.03 plus interest. If you have lost your certificates, you should prepare a statement setting out that the deposits were made as alleged in the Notice of Claim form, giving the numbers of the certificates, the dates of the deposits, and the branch of the Bank at which the certificates were purchase. You should also state that you have not received payment from the Bank or accepted renewed certificates of deposit. This statement should be

signed and sworn to by you before a Notary Public and forwarded to this Office in support of your claim.

Payment of your claim, however, will not be made immediately. Under the procedures set forth in section 34(f) of the Trading with the Enemy Act, as amended (50 U.S.C. App. 34(f)), it is necessary that all of the approximately 9000 claims filed against the Yokohama Specie Bank, Ltd. be reviewed and a schedule issued showing the proposed payments before any payments can be made. Within sixty days after the issuance of the schedule, any aggrieved claimant my file in the District Court of the United States for the District of Columbia a complaint for review of such schedule, naming the Attorney General as defendant. If no complaint for review is filed, payments will be made in accordance with the schedule.

Advice received by this Office is to the effect that yen certificate of deposit accounts are carried on the books of the Yokohama Specie Bank, Ltd. in Japan, and the funds may be withdrawn in that country or transferred to the Bank of Tokyo, Ltd. Under the circumstances, you may wish to utilize the funds in Japan rather than await settlement by this Office. If this is done, the Notice of Claim filed with this Office should be canceled by signing and mailing the enclosed Notice of Cancellation of Claim card.

If, however, you wish to maintain your claim with this Office you are requested to submit the original certificates of deposit or the notarized statement as to why they cannot be forwarded. In the event you object to the allowance of your claim in the amount stated above, you should submit the certificates to this Office within the next forty-five days and file a statement specifying your objections, together with the reasons in support thereof. Upon receipt of your objections, if I consider them to be without merit, I shall apply to the Director of this Office, pursuant to section 502.25(i) of the Rules of Procedure for Claims, a copy of which is enclosed, for the entry of an Order allowing your claim in the principal amount stated above, plus interest, and dismissing any portion over and above that amount on the ground that there is no debt due and owing to you by the Yokohama Specie Bank, Ltd. in excess of that amount.

In acting upon my application, the Director will consider the statement of objections that you may have submitted.

On the other hand, if within the next forty-five days you do not submit the original certificates of deposit or a statement explaining why they cannot be forwarded, I shall conclude that the claim has been abandoned in its entirety and, without further notice to you, shall apply to the Director for the entry of an Order dismissing the claim on the ground of abandonment, pursuant to section 502.25(g) and (i) of the Rules of Procedure for Claims.

To recapitulate:

1. If you wish to maintain your claim with this Office, you should within forty-five days forward the original certificates of deposit and, if you wish to do so, file a statement of your objections to the allowance of the claim in the amount stated above.

2. If you wish to maintain your claim but do not have the original certificates of deposit, you should within forty-five days submit a statement, signed and sworn to before a Notary Public, giving the details of the deposits and stating that you have not received payment or renewed certificates. If you wish to do so, you may also file a statement of your objections to the allowance of the claim in the amount stated.

3. I shall then apply to the Director for an Order allowing your claim in the principal amount stated above, plus interest, and dismissing any portion over and above that amount. Where objections have been filed, they will be submitted to the Director for his consideration in acting upon your claim.

4. If, within forty-five days, you do not submit the original certificates of deposit or an explanation as to why you cannot forward them, I shall conclude that the claim has been abandoned and shall apply to the Director for an Order dismissing the claim on that ground.

5. If you prefer to utilize the funds in Japan, you should sign and mail the inclosed Notice of Cancellation of Claim card in order to clear the records of this Office.

Please note that the original certificates must be submitted; photostatic copies cannot be substituted.

Sincerely yours,

/s/ DANIEL G. MCGRATH,
Chief, Claims Administration Section
Office of Alien Property.

Enclosures

cc: Wirin, Rissman & Okrand,
Attorneys at Law,
257 South Spring Street,
Los Angeles 12, California.

UNITED STATES OF AMERICA
DEPARTMENT OF JUSTICE
Office of Alien Property
Washington, D. C.

Debt Claim No. 49102

In the Matter of: KANEKICHI MURAKAMI—Claimant (Insolvent Estate of the Yokohama Specie Bank, Ltd., alleged debtor, V.O. Nos. 1501, et al.)

ORDER DISMISSING DEBT CLAIM
(Abandonment)

Pursuant to section 502.25(i) of the Rules of Procedure for Claims of this Office (8 CFR 502.25(i)), the Chief of the Claims Administration Section by letter dated July 29, 1959, notified the claimant by registered mail, return receipt requested, that unless necessary information for the processing of the claim under section 34 of the Trading with the Enemy Act, as amended (50 U.S.C. App. 34), was received within forty-five (45) days from the date of said letter, he would apply to the Director for an Order dismissing the claim on the ground of abandonment. A copy of section 502.25(g) and (i) of the Rules of Procedure for Claims was enclosed with the letter, setting forth the claimant's right to object to the proposed dismissal. More than forty-five days have elapsed since the mailing of the letter and no reply has been received with respect thereto.

Upon the application of the Chief of the Claims Administration Section and finding that the said claim has been abandoned;

IT IS ORDERED that this claim be and it is hereby dismissed and disallowed. It should be noted that the aggregate of debt claims filed against the Yokohama Specie Bank, Ltd., exceeds the money from which payment may be made by this Office and that any further proceedings are governed by section 34(f) of the Trading with the Enemy Act, as amended.

Dated at Washington, D. C. 29 September 1959.

(signed) PAUL V. MYRON.
DALLAS S. TOWNSEND,
Assistant Attorney General,
Director, Office of Alien Property.

DGMcG:ABD:djw
Claim No. 49102

REGISTERED MAIL #784314
CLAIMANT: Kanekichi Murakami,
450 No. 12th West,
Salt Lake City, Utah.

NOTICE

Attached is a copy of a Final Schedule issued under Section 34(f) of the Trading with the Enemy Act, as amended (50 U.S.C. App. 34), in respect of the Yokohama Specie Bank, Ltd., an insolvent debtor, listing the claims in respect of said debtor allowed as priority (3) claims and as non-priority claims and the payments to be made thereon. If your claim is not shown on the Schedule, it is for the reason that the claim has been dismissed and disallowed by this Office.

This Schedule is being served by registered mail on all claimants listed therein, as well as on claimants whose claims have been dismissed and disallowed. Pursuant to Section 34(f) of the Trading with the Enemy Act, as amended, any claimant considering himself aggrieved by this Final Schedule may, within sixty (60) days from the date of the mailing of the Schedule, file in the United States District Court for the District of Columbia a complaint for review of this Schedule, naming the Attorney General as defendant. A copy of such complaint must be served on the Attorney General and on each claimant named in the Schedule. If no such complaint for review is filed within the sixty-day period, payments to claimants will be made by this Office as specified in the Final Schedule.

Date. October 4, 1961.

PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

Enclosure

Filed December 29, 1964

AFFIDAVIT

JULIAN M. HARE, being duly sworn, deposes and says:

1. I am the duly appointed Records Officer of the Office of Alien Property, Department of Justice, and as such I have custody of all the files and records relating to the operation of the Office.

2. I have caused a diligent search to be made of the records and files in my custody to ascertain when copies of the Yokohama Specie Bank Ltd. Final Schedule signed by the Deputy Director of the Office of Alien Property on May 11, 1961, were mailed by registered mail to claimants who had filed debt claims against the vested property of the Yokohama Specie Bank Ltd., which had not been withdrawn, as required by Section 34(f) of the Trading with the Enemy Act, 50 U.S.C. App. 34(f).

3. My examination of the said files disclosed that such Yokohama Specie Bank Ltd. Final Schedules were mailed to the claimants between August 22, 1961 and October 19, 1961, inclusive.

JULIAN M. HARE.

Sworn to before me this 20th day of November, 1964.

DONNA A. COWDEN,
Notary Public, District of Columbia.

[SEAL]

My Commission expires September 30, 1966.

Filed March 31, 1965, Harry M. Hull, Clerk

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1179-64

AYAKO HONDA, ET AL., *Plaintiffs*,

v.

NICHOLAS deB. KATZENBACH, Attorney General of the United States, *Defendant*

ORDER

Defendant's motion to dismiss having come on for hearing and the Court having considered the memoranda in support thereof and in opposition thereto, having heard argument of counsel, and having concluded that the Court lacks jurisdiction over the subject matter of this action because it was not commenced within the time set forth in Section 34(f) of the Trading with the Enemy Act, as amended (50 U.S.C. App. 34(f), it is this 31st day of March, 1965

ORDERED that plaintiffs' complaint be and the same is hereby dismissed.

WILLIAM B. JONES,
Judge.

Filed April 2, 1965

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil No. 1179-64

AYAKO HONDA ET AL, *Plaintiffs,*

vs.

NICHOLAS deB. KATZENBACH, *Defendant.*

NOTICE OF APPEAL

Notice is hereby given this 2nd day of April, 1965, that plaintiffs hereby appeal to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 31st day of March, 1965, in favor of Defendant against said Plaintiffs.

JOHN SILARD,
Attorney for Plaintiffs,
1625 K Street, N.W., D.C.

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Filed July 9, 1964

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1630-64

MASAE KONDO, 4216 Cumberland Avenue, Los Angeles, California 90027, on behalf of herself and on behalf of all others similarly situated, *Plaintiff*,

v.

ROBERT F. KENNEDY, Attorney General of the United States, Department of Justice Building, Washington 25, D. C., *Defendant*.

COMPLAINT FOR DECLARATORY AND OTHER RELIEF

1. This Court has jurisdiction under 5 USC 1009, 28 USC 1331, 1357 and 2201, and 50 USC Appx. 34f, as amended.

2. Plaintiff is a former depositor in the Yokohama Specie Bank, Ltd., and had assets on deposit in said bank on December 7, 1941, evidenced by Certificates of Deposit issued to her, or those through whom she claims, in the United States in exchange for the deposit of dollars in said bank, which Certificates were redeemable upon demand in dollars at the offices of the bank in the United States or in Yen at the offices of the bank in Japan.

3. Defendant, Robert F. Kennedy, is the Attorney General of the United States. He is a successor in office to the Alien Property Custodian who on December 7, 1941 seized, and in 1943, pursuant to the Trading with the Enemy Act as amended (50 USC Appx. 34, 620), vested certain properties of the Yokohama Specie Bank, Ltd., including the funds plaintiff had on deposit therewith. Unless otherwise stated, the term defendant will be used hereinafter to refer to the named defendant and/or his predecessors in office or the Office of Alien Property, or his agents, as the context may require.

4. Plaintiff files this action on her own behalf and on

behalf of all persons similarly situated, namely those persons who filed timely debt claims with defendant pursuant to the Trading with the Enemy Act, but whose claims the defendant dismissed but who did not receive notice from defendant of said dismissal; and who had no knowledge of such dismissal.

5. On or about March 27, 1964, plaintiff learned for the first time, from newspaper accounts in the Japanese press, that her claim was not covered by the settlement which had been reached in *Abe* v. *Kennedy*, Civil Action Number 2529-61 in this Court.

6. Whereupon, through counsel, plaintiff, on or about April 3, 1964 communicated with defendant and made application to him for recognition of her claim and payment thereof. Said communication and application are referred to herewith, incorporated herein as though fully set forth and a copy thereof, including the affidavit referred to in said letter, are attached hereto as Exhibit A.

7. Thereafter, defendant advised plaintiff's attorney over the telephone that he was considering plaintiff's claim.

8. Subsequent thereto, on or about April 27, 1964, plaintiff's attorney was advised by defendant that if plaintiff did not have notice that her claim was dismissed and that her claim was not included in the Final Schedule, the defendant would allow the plaintiff's claim and pay said claim in the same proportion to be paid to claimants by virtue of the settlement in *Abe* v. *Kennedy*, Civil Action No. 2529-61 in this Court.

9. By letter dated May 13, 1964, defendant refused to allow plaintiff's claim. Said letter is referred to herewith, incorporated herein as though fully set forth and a copy thereof attached hereto as Exhibit B.

10. Plaintiff has no information or basis for stating and she does not state that defendant did not, on or about September 8, 1961, mail a copy of the Yokohama Specie Bank Final Schedule to her at 3619½ Bellevue Avenue, Los Angeles 26, California as set forth in defendant's letter of May 13, 1964, Exhibit B hereto. But plaintiff does state that she did not receive a copy of it. In this connection, plaintiff alleges that she moved from the Bellevue Avenue

address to her present address on Cumberland Avenue in or about January, 1959.

11. The refusal of defendant to pay plaintiff's valid debt claim is injurious, inequitable, contrary to the statutory rights of plaintiff and deprives her of property without due process of law.

12. Plaintiff is informed and believes and therefore alleges that there are others similarly situated with her who did not get proper notice and whose valid debt claims were not recognized by defendant.

WHEREFORE, plaintiff prays that she and those similarly situated with her, have their claims recognized at the ratio of 23.4 cents per yen or, in the alternative, on the same basis as the plaintiffs in the case of *Abe* v. *Kennedy*, No. No. 2529-61 in this Court, and for other appropriate relief.

JOSEPH L. RAUH, JR.,
JOHN SILARD,
1625 K Street, N.W.,
Washington 6, D. C.

A. L. WIRIN,
FRED OKRAND,
257 South Spring Street,
Los Angeles 12, California,
Attorneys for Plaintiff.

O/s

EXHIBIT A

3 April 1964

Certified Mail No. 289880
Return Receipt Requested

Armand DuBois, Esq.,
Department of Justice,
Washington 25, D. C.

Re: Mrs. Masae Kondo (nee Wakasugi), Yokohama Specie Bank, yen deposit certificate claim No. 4018 (Matter of the Insolvent Account of: The Yokohama Specie Bank, Ltd., Vesting Orders Nos. 915, et al, Accounts No. 39-23487-23492, inclusive, in the Office of Alien Property, Department of Justice) (Aratani v. Kennedy, Civil Action No. 3164-58; Sumiyoshi v. Kennedy, Civil Action No. 3228-58; Shigeno v. Kennedy, Civil Action No. 1176-59; Abe v. Kennedy, Civil Action No. 2529-61, all US DC DC)

Dear Mr. Dubois:

As you will see from the enclosed affidavit, Mrs. Kondo received no notification of the determination by the Office of Alien Property of her or any Yokohama Specie Bank yen deposit claim, nor of the fact, if it be a fact, that her claim was dismissed, nor of the fact that her name was not included in the Final Schedule of the Yokohama Specie Bank claims.

It is clear that, just as with her Sumitomo Bank claim, she expected to be included in any determination that was made and to process her claim to a conclusion. Accordingly, it would seem proper that she be included as among those who will participate in the distribution of the Yokohama Specie bank funds following conclusion of the court matters.

I write to request, and to ascertain, whether you will join with this office on behalf of Mrs. Kondo in an appropriate motion, or other proceeding, before the Court or the Office of Alien Property, to amend the Final Schedule or to otherwise include Mrs. Kondo in the distribution. You will note

that with her affidavit, her first opportunity, she attached her original certificates.

Your early consideration and reply will be appreciated.

Sincerely yours,

FRED OKRAND.

FO/s
Enc.

Certified Mail No. 289880, Return Receipt Requested

bcc: Mrs. Kondo

EXHIBIT B

May 13 1964

UNITED STATES DEPARTMENT OF JUSTICE
Washington, D.C.

ALM:BSA:ABD:lhm
Claim No. 30418

AIR MAIL

Mr. Fred Okrand
257 South Spring Street
Los Angeles 12, California

Dear Mr. Okrand:

Reference is made to your letter of April 3, 1964, with enclosed affidavit, concerning the above-numbered debt claim based upon certificates of deposit, totalling yen 15,216.82 or $42.07 at the post-war rate of exchange, that Mrs. Masae Kondo filed with this Office against the vested property of The Yokohama Specie Bank Ltd. under Section 34 of the Trading with the Enemy Act, as amended, 50 U.S.C. App. 34. Mrs. Kondo states in her affidavit that she has never received any communication from the Office of Alien Property requesting her to submit the original certificates of deposit or notifying her that her claim had been dismissed and was not included in The Yokohama Specie Bank Ltd. Final Schedule. Mrs. Kondo submits the original certificates at this time and requests that her claim be reinstated.

The records of this Office show that Mrs. Kondo's claim against The Yokohama Specie Bank Ltd. was dismissed on January 22, 1959 on the ground of abandonment, pursuant to Section 502.25(i) of the Rules of Procedure for Claims, when a registered letter, return receipt requested, dated November 28, 1958, from this office, requesting that Mrs. Kondo submit the original certificates on which the claim

was based, was returned by the Post Office with the notation "Unknown." By inadvertence, the letter of November 28, 1958 and the copy of the dismissal order of January 22, 1959 were mailed to Mrs. Kondo at her former address at 636 N. Virgil Avenue, Los Angeles 4, California. However, a copy of The Yokohama Specie Bank Ltd. Final Schedule with accompanying Notice which was sent to Mrs. Kondo by registered mail on September 8, 1961, was sent to her correct current address of 3619½ Bellevue Avenue, Los Angeles 26, California. Since Mrs. Kondo's claim had been dismissed, it did not appear on The Yokohama Specie Bank Ltd. Final Schedule.

On this state of facts, no basis has been shown for reinstating Mrs. Kondo's claim. As required by Section 34(f) of the Act, and by Section 502.202(e) of the Rules of Procedure for Claims (8 CFR 502.202), Mrs. Kondo was properly served with a copy of The Yokohama Specie Bank Ltd. Final Schedule. The Notice attached to the copy of the Final Schedule, which was mailed to Mrs. Kondo on September 8, 1961 at her Bellevue Avenue address, informed her that if she considered herself aggrieved by the failure of her claim to appear on the Final Schedule she could file a complaint for review of the Final Schdeule under Section 34(f) of the Act within 60 days from the date of the mailing of the Final Schedule. No timely complaint was filed by Mrs. Kondo.

The proposed compromise settlement of yen deposit claims, provisionally approved on March 17, 1964 by Judge Leonard P. Walsh in the United States District Court for the District of Columbia, will benefit only Sumitomo Bank Ltd. and Yokohama Specie Bank Ltd. yen deposit claimants who claims appeared on the Final Schedules of the two banks issued under Section 34(f) of the Act as allowed at the post-war rate of exchange, and who participated in the litigation respecting yen deposit claims. As far as her claim against The Yokohama Specie Bank Ltd. is concerned, Mrs. Kondo cannot qualify for inclusion in this group.

I am returning the original certificates of deposit attached to Mrs. Kondo's affidavit.

Very truly yours,

JOHN W. DOUGLAS,
Assistant Attorney General,
Civil Division.

By: ANTHONY L. MONDELLO,
Deputy Director,
Office of Alien Property.

Enclosures

AFFIDAVIT OF MRS. MASAE KONDO

RE: Yokohama Specie Bank deposits

STATE OF CALIFORNIA,
County of Los Angeles, ss:

I, MASAE KONDO, being duly sworn, depose and say:

My maiden name was Wakasugi.

On September 9, 1947 and again on October 14, 1947 I wrote the Office of Alien Property. A copy of said letters is attached hereto as Exhibit A.

In October, 1947 I received a letter dated October 21, 1947 from the Office of Alien Property. A copy of said letter is attached hereto as Exhibit B.

Purusuant to said letter of October 21, 1947, and on or about October 28, 1947, I sent in to the Office of Alien Property, Department of Justice, 2 Notice of Claim for Payment of Debt forms No. APC-1c. One form was for my deposits with the Sumitomo Bank for certificate numbers 12490, 17685, 17315, 17314, 17375, 17741. The second form was for my deposits with the Yokohama Specie Bank for certificate numbers 71592 (Yen 1,182.51), 71593 (Yen 1,166.17), 71651 (Yen 5,028.24), 71652 (Yen 7839.90). The certificates in both banks were made out in the name of either my deceased mother (Katsue Wakasugi) or my deceased father (Mankichi Wakasugi) or in the case of only one, as I now recall (No. 71593 of the Yokohama Specie Bank), in the name of my father and myself. The total number of yen as to the Yokohama Specie Bank certificates is 15,216.82. The amount as to Sumitomo is Yen 5066.

At the same time I sent in the claim forms I attached photostatic copies of the certificates as to both banks.

By postcard dated November 12, 1947, I received acknowledgment from the Office of Alien Property of the receipt of the forms. A copy of that postcard is attached hereto as Exhibit C.

By letter dated November 4, 1948, I received what I take it was the formal notice from the Office of Alien Property

of my Sumitomo Bank claim. A copy of that letter is attached hereto as Exhibit D.

I also received a letter dated November 26, 1947 from the Office of Alien Property similar to the one I had received dated October 21, 1947 (Exhibit B attached hereto). A copy of that letter is attached hereto as Exhibit E.

In January, 1949, I received what I take it was the formal notice from the Office of Alien Property of my Yokohama Specie Bank claim. A copy of said letter is attached hereto as Exhibit F.

When I moved from Chicago, to Los Angeles, in 1948, I notified the Office of Alien Property that my address was changed from 2150 N. Lincoln Avenue, Chicago 14, Illinois to 636 N. Virgil Avenue, Los Angeles, California.

In 1951 we moved from the Virgil Avenue address to 3619½ Bellevue Avenue, Los Angeles 26, California and I notified the Office of Alien Property of that change by letter dated August 28, 1951.

In February, 1958, I received a letter dated February 3, 1958 regarding my Sumitomo Bank Claim. Attached hereto is a copy of that letter as Exhibit G.

I replied to the letter of February 3, 1958 on February 27, 1958 as per copy attached hereto as Exhibit H. At the same time, per the request in the February 3 letter, I sent in my original Sumitomo Bank certificates.

On or about October 28, 1958, I received in the mail from the Office of Alien Property a pamphlet entitled "Final Schedule", "In the Matter of the Insolvent Account of The Sumitomo Bank, Ltd., Vesting Orders Nos. 162, et al. Account No. 39-705." This Sumitomo Bank Final Schedule is the last communication I received from the Office of Alien Property. I received no communication, similar to the letter of February 3, 1958 (Exhibit G attached hereto) advising me that any determination had been made of my Yokohama Specie Bank claim nor asking me to send in the original deposit certificates, nor did I receive any "Final Schedule" as to the Yokohama Specie Bank. I did not know that any ruling had been made as to the Yokohama Specie Bank until I read about it in a newspaper on or about Friday, March 27, 1964.

On March 31, 1964 I notified the Office of Alien Property of my change of address from Bellevue Avenue to 4216 Cumberland Avenue, Los Angeles, California 90027.

It has been my intention all along to process my Yokohama Specie Bank claim. It is in a larger amount than the Sumitomo Bank claim. Had I received a letter regarding my Yokohama Specie Bank claim similar to the letter of February 3, 1958 (Exhibit G attached hereto) regarding my Sumitomo Bank claim or any request for me to send in my Yokohama Specie Bank certificates, I would have done so just as I did in the case of my Sumitomo Bank certificates. I attach hereto said 4 original Yokohama Specie Bank Certificates.

MASSE KONDO.

Subscribed and sworn to before me this 3rd day of April 1964.

Sheila M. Schaum,
Notary Public in and for said County and State.

My Comm. Exp. May 1, 1964.

EXHIBIT G

DEPARTMENT OF JUSTICE
Office of Alien Property
Washington 25, D.C.

February 3, 1958.

ABD:DBW:hhl
Claim No. 30417

REGISTERED MAIL
RETURN RECEIPT REQUESTED

Mrs. Masae Kondo,
3619½ Bellevue Avenue,
Los Angeles 26, California.

Dear Mrs. Kondo:

Reference is made to the above-numbered debt claim which has been filed with this Office with respect to the insolvent account of the Sumitomo Bank, Ltd. The claim is based upon yen certificates of deposit.

The Director of this Office decided on November 13, 1957, *In the Matter of Kunio Abe, et al.*, Claim No. 55507, Docket No. 55 D 72, which decision the Attorney General has declined to review, that yen certificates of deposit issued by the Yokohama Specie Bank, Ltd. and the Sumitomo Bank, Ltd. are obligations payable in yen in Japan, and that claims based on such certificates of deposit are to be allowed and paid in United States currency at the post war rate of exchange in accordance with the "Judgment Day" rule set forth in *Deutsche Bank* v. *Humphrey*, 272 U.S. 517 (1926). Thus, the current rate of exchange of 361.55 yen to one dollar must be used in converting the yen into a dollar amount. Interest is allowable from the date of deposit to the date of payment.

Therefore, if you submit your original certificates of deposit to this Office, I can recommend your claim for allowance in the sum of $14.00 plus interest. If you have lost your certificates you should so advise me and state the branch in Japan of the Bank to which the remittances were

forwarded. We will then attempt to trace your deposits on the records of the Bank.

Payment of your claim, however, will not be made immediately. Under the procedures set forth in section 34(f) of the Trading with the Enemy Act, as amended (50 U.S.C. App. 34(f)), it is necessary that all of the approximately 9000 claims filed against the Sumitomo Bank, Ltd. be reviewed and a schedule issued showing the proposed payments before any payments can be made. Within sixty days after the issuance of the schedule, any aggrieved claimant may file in the District Court of the United States for the District of Columbia a complaint for review of such schedule, naming the Attorney General as defendant. If no complaint for review is filed, payments will be made in accordance with the schedule.

Advice received by this Office is to the effect that yen certificate of deposit accounts are carried on the books of the Sumitomo Bank, Ltd. in Japan, and the funds may be withdrawn in that country. Under the circumstances, you may wish to utilize the funds in Japan rather than await settlement by this Office. If this is done, the Notice of Claim filed with this Office should be withdrawn by signing and mailing the enclosed Notice of Withdrawal card.

If, however, you wish to maintain your claim with this office, you are requested to submit the original certificates of deposit and to amend your claim to the above amount. A letter stating that you are willing to so amend your claim will be sufficient. In the event you object to the allowance of your claim in this amount, you should submit the certificates to this Office within the next thirty days and file a statement specifying your objections, together with the reasons in support thereof. Upon receipt of your objections, if I consider them to be without merit, I shall apply to the Director of this Office, pursuant to section 502.25(i) of the Rules of Procedure for Claims, a copy of which is enclosed, for the entry of an Order allowing your claim in the principal amount stated, plus interest, and dismissing any portion over and above that amount on the ground that there is no debt due and owing to you by the Sumitomo Bank, Ltd. in excess of that amount. In

acting upon my application, the Director will consider the statement of objections that you may have submitted.

On the other hand, if within the next thirty days you do not submit the original certificates of deposit or an explanation as to why they cannot be forwarded, I shall conclude that the claim has been abandoned in its entirety and, without further notice to you, shall apply to the Director for the entry of an Order dismissing the claim on the ground of abandonment, pursuant to section 502.25(g) and (i) of the Rules of Procedure for Claims.

To recapitulate:

1. If you wish to maintain your claim, you should within thirty days forward the original certificates of deposit and:

   a. Amend your claim to the amount stated, or

   b. State your objections to the allowance of the claim in that amount.

2. If you wish to maintain your claim but do not have the original certificates of deposit, you should so advise me within thirty days, giving the name of the branch in Japan to which your funds were remitted, and:

   a. Amend your claim to the amount stated, or

   b. State your objections to the allowance of the claim in that amount.

3. Where objections have been filed, if I consider them to be without merit, I shall apply to the Director for an Order allowing your claim in the principal amount stated, plus interest, and dismissing any portion over and above that amount.

4. If, within thirty days, you do not submit the original certificates of deposit or an explanation as to why you cannot forward them, I shall conclude that the claim has been abandoned and shall apply to the Director for an Order dismissing the claim on that ground.

5. If you prefer to utilize the funds in Japan, you should sign and mail the enclosed Notice of Withdrawal card in order to clear the records of this Office.

Sincerely yours,

Arthur R. Schor,
Chief, Claims Section,
Office of Alien Property.

Enclosures

TITLE 8—ALIENS AND NATIONALITY

CHAPTER II—OFFICE OF ALIEN PROPERTY, DEPARTMENT OF JUSTICE PART 502—RULES OF PROCEDURE FOR CLAIMS UNDER THE TRADING WITH THE ENEMY ACT.

Section 502.25—MOTION TO DISMISS.

Paragraph (i) of Section 502.25 of the Rules provides:

> Notwithstanding the provisions of this section the Chief of the Claims Section may serve a notice upon the claimant that, after the expiration of a time fixed in the notice, which time shall not be less than thirty (30) days, he intends to apply to the Director for an order dismissing the claim. The notice shall state the grounds for dismissal and the claimant may, within the time indicated in the notice, file a statement specifying his objections to dismissal, together with his reasons in support thereof; any evidence or other material in support of the claim which has not previously been filed with this Office shall be filed by the claimant with the statement of objections. Upon application by the Chief of the Claims Section for an Order dismissing the claim, the Director will consider the objections if any which may have been filed. The Director thereafter may remand the application to the Chief of the Claims Section for further proceeding under these rules, or in the case of *non-excepted claims* if it appears to him that there is no genuine issue may issue an order dismissing the claim. In cases of *excepted claims* where the Director is of the opinion there is no genuine issue he shall transmit the record together with any objections which have been filed to the dismissal of the claim to the Attorney General, and upon approval by the Attorney General, the Director shall enter an order dismissing the claim. (21 F.R. 1582, March 1, 1956)

§ 502.2(h) provides: "The terms 'excepted claim' means (1) any title claim which involves the return of assets

having a value of $50,000 or more and any debt claim in the amount of $50,000 or more; * * * *" and

§ 502.2(i) provides: "The term 'non-excepted claim' shall mean any claim other than an 'excepted claim'." (21 F. R. 1580, March 14, 1956)

NOTICE OF WITHDRAWAL

Claim No. 30417 Date.
Claimant Mrs. Masae Kondo
Debtor SUMITOMO BANK, LTD.

(I hereby withdraw the above claim)

_____

(claimant)

by _____ _____

EXHIBIT H

3619½ Bellevue Avenue
Los Angeles 26, California
27 February 1958

Claim No. 30417

Department of Justice,
Office of Alien Property,
Washington 25, D.C.

In re: ABD:DRW:hhl

Gentlemen:

I am in receipt of your letter of February 3, 1958 concerning my Sumitomo Bank claim.

Per your request, I transmit herewith certificate numbers 12490, 17314, 17315, 17375, 17685 and 17741.

I decline to amend my claim to the amount stated in your letter ($14.00) as I believe the amount is grossly unfair.

My objections are that I believe I am entitled to the return of the actual dollars which the Government seized. I do not know legal terms and whether this should be phrased in terms of rate of exchange except that it seems to me that when the Government took a certain amount of money that did not belong to it but belonged to other people that the people who owned the money should be paid back that amount.

Sincerely yours,

MRS. MASAE KONDO.

Enclosures

Filed September 4, 1964

ANSWER

Defendant, for his answer to the Complaint:

I. Denies each and every allegation of paragraph 1 of the complaint.

II. Denies the allegation of paragraph 2 of the complaint that plaintiffs' certificates of deposit were redeemable upon demand in dollars at the offices of the Yokohama Specie Bank Ltd. in the United States, but except as thus expressly denied, admits the allegations of paragraph 2 of the complaint.

III. Denies the allegation of paragraph 3 of the complaint that the vested property of the Yokohama Specie Bank Ltd. in the United States included funds that the plaintiff had on deposit there but except as thus expressly denied admits the allegations of paragraph 3 of the complaint.

IV. Admits the allegations of paragraph 4 of the complaint.

V. Denies any knowledge or information sufficient to form a belief as to each and every allegation of paragraph 5 of the complaint.

VI. Denies any knowledge or information sufficient to form a belief as to each and every allegation of paragraph 6 of the complaint.

VII. Denies any knowledge or information sufficient to form a belief as to each and every allegation of paragraph 7 of the complaint.

VIII. Denies each and every allegation of paragraph 8 of the complaint.

IX. Admits the allegations of paragraph 9 of the complaint.

X. Denies any knowledge or information sufficient to form a belief as to each and every allegation of paragraph 10 of the complaint.

XI. Denies each and every allegation of paragraph 11 of the complaint.

XII. Denies any knowledge or information sufficient to form a belief as to each and every allegation of paragraph 12 of the complaint.

WHEREFORE, defendant demands judgment dismissing the plaintiff's Complaint.

JOHN W. DOUGLAS,
Assistant Attorney General,
Civil Division.

ANTHONY L. MONDELLO,
ARMAND B. DUBOIS,
Attorneys for Defendant,
Department of Justice,
Office of Alien Property.

Filed December 29, 1964

DEFENDANT'S MOTION TO DISMISS THE COMPLAINT

Defendant moves to dismiss the complaint on the ground that the Court lacks jurisdiction over the subject matter of this action because it was not commenced within the time set forth in Section 34(f) of the Trading with the Enemy Act, as amended (50 U.S.C. App. 34(f)).

JOHN W. DOUGLAS,
Assistant Attorney General.

ANTHONY L. MONDELLO,
ARMAND B. DUBOIS,
Attorneys for Defendant.

UNITED STATES OF AMERICA
Department of Justice
Office of Alien Property
Washington, D. C.

Debt Claim No. 30418

In the Matter of: MASAE KONDO (Insolvent Estate of the Yokohama Specie Bank Ltd., alleged debtor, V.O. Nos. 1501, et al.)

ORDER DISMISSING DEBT CLAIM
(Abandonment)

Pursuant to section 502.25(i) of the Rules of Procedure for Claims of this Office (8 CFR 502.25(i)), the Chief of the Claims Section by letter dated November 28, 1958, notified the claimant by registered mail, return receipt requested, that unless necessary information for the processing of the claim under section 34 of the Trading with the Enemy Act, as amended (50 U.S.C. App. 34), was received within forty-five days from the date of said letter, he would apply to the Director for an Order dismissing the claim on the ground of abandonment. A copy of section 502.25(g) and (i) of the Rules of Procedure for Claims was enclosed with the letter, setting forth the claimant's right to object to the proposed dismissal. The aforementioned letter of notification from the Claims Section was returned to this Office by the postal authorities bearing the notation stamp: "Unknown"

Upon the application of the Chief of the Claims Section and finding that the said claim has been abandoned;

IT IS ORDERED that this claim be and it is hereby dismissed and disallowed. It should be noted that the aggregate of debt claims filed against the Yokohama Specie Bank, Ltd., exceeds the money from which payment may be made by this Office and that any further proceedings

are governed by section 34(f) of the Trading with the Enemy Act, as amended.

Dated at Washington, D.C.

(Signed) PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

January 22, 1959.

DEPARTMENT OF JUSTICE
Office of Alien Property
Washington 25, D.C.

Claim No. 30418
DGMcG:ABD.lhm

REGISTERED MAIL 784651
CLAIMANT: Mrs. Masae Kondo,
3619 ½ Bellevue Avenue,
Los Angeles 26, California.

NOTICE

Attached is a copy of a Final Schedule issued under Section 34(f) of the Trading with the Enemy Act, as amended (50 U.S.C. App. 34), in respect of the Yokohama Specie Bank, Ltd., an insolvent debtor, listing the claims in respect of said debtor allowed as priority (3) claims and as non-priority claims and the payments to be made thereon. If your claim is not shown on the schedule, it is for the reason that the claim has been dismissed and disallowed by this Office.

This schedule is being served by registered mail on all claimants listed therein, as well as on claimants whose claims have been dismissed and disallowed. Pursuant to Section 34(f) of the Trading with the Enemy Act, as amended, any claimant considering himself aggrieved by this Final Schedule may, within sixty (60) days from the date of the mailing of the Schedule, file in the United States District Court for the District of Columbia a complaint for review of this Schedule, naming the Attorney General as defendant. A copy of such complaint must be served on the Attorney General and on each claimant named in the Schedule. If no such complaint for review is filed within the sixty-day period, payments to claimants will be made by this Office as specified in the Fnal Schedule.

PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

Date: September 8, 1951

Enclosure

Filed December 29, 1964

AFFIDAVIT

Julian M. Hare, being duly sworn, deposes and says:

1. I am the duly appointed Records Officer of the Office of Alien Property, Department of Justice, and as such I have custody of all the files and records relating to the operation of the Office.

2. I have caused a diligent search to be made of the records and files in my custody and find that a copy of the Yokohama Specie Bank Ltd. Final Schedule was mailed to Mrs. Masae Kondo on September 8, 1961, to 3619½ Bellevue Avenue, Los Angeles 26, California, in connection with her Claim No. 30418, and that said copy was not returned to this Office.

JULIAN M. HARE.

Sworn to before me this 20th day of November 1964.

DONNA A. COWDEN,
Notary Public, District of Columbia.

My Commission expires September 30, 1966.

Filed March 31, 1965, Harry M. Hull, Clerk

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1630-64

MASAE KONDO, ET AL., *Plaintiffs*,

v.

NICHOLAS DEB. KATZENBACH, Attorney General of the United States, *Defendant*

ORDER

Defendant's motion to dismiss having come on for hearing and the Court having considered the memoranda in support thereof and in opposition thereto, having heard argument of counsel, and having concluded that the Court lacks jurisdiction over the subject matter of this action because it was not commenced within the time set forth in Section 34(f) of the Trading with the Enemy Act, as amended (50 U.S.C. App. 34(f), it is this 31st day of March, 1965

ORDERED that plaintiffs' complaint be and the same is hereby dismissed.

WILLIAM B. JONES,
Judge.

Filed April 2, 1965

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil No. 1630-64

MASAE KONDO, ET AL., *Plaintiffs*,

vs.

NICHOLAS KATZENBACH, *Defendant*

NOTICE OF APPEAL

Notice is hereby given this 2 day of April, 1965, that plaintiffs hereby appeal to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 31 day of March, 1965 in favor of Defendant, against said Plaintiffs.

JOHN SILARD,
Attorney for Plaintiffs,
1625 K St., N.W., D.C.

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PAGE

[fol. 69]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19,282

MASAE KONDO, et al., Appellants,

v.

NICHOLAS deB. KATZENBACH,
Attorney General of the United States, Appellee.

No. 19,283

MASARU OKAMOTO, et al., Appellants,

v.

NICHOLAS deB. KATZENBACH,
Attorney General of the United States, Appellee.

No. 19,284

AYAKO HONDA, et al., Appellants,

v.

NICHOLAS deB. KATZENBACH,
Attorney General of the United States, Appellee.

[fol. 70] On Appeals from the United States District Court for the District of Columbia.

Mr. John Silard and Mr. Fred Okrand of the bar of the Supreme Court of California, *pro hac vice*, by special leave

of court, with whom Messrs. Joseph L. Rauh, Jr., and A. L. Wirin were on the brief, for appellants.

Mr. David L. Rose, Attorney, Department of Justice, for appellee. Mr. John W. Douglas, Assistant Attorney General and Messrs. Sherman L. Cohn, Anthony L. Mondello and Armand B. DuBois, Attorneys, Department of Justice, were on the brief, for appellee.

Before: Danaher, Wright and Tamm, Circuit Judges.

OPINION—January 13, 1966

Tamm, Circuit Judge:

I

Presented to us in these cases, consolidated for hearing, is a precise question: Did the District Court correctly dismiss the appellants' complaints on the ground that the court lacked jurisdiction of the subject matter of the actions because the complaints were not filed within the 60-day limitation period prescribed by section 34(f) of the Trading with the Enemy Act (60 Stat. 925, 50 U.S.C. App. § 34(f))? (See Appendix A at 17-18.)

The three actions under review were filed in the District Court in May and July of 1964 and seek to set aside the dismissal by the Attorney General of appellants' debt claims based upon their deposits of yen in the American branches of the Yokohama Specie Bank, Ltd. Except for the claimant internees or parolees in No. 19,283, appellants are several thousand Americans of Japanese ancestry who, [fol. 71] residing in the United States, had, prior to December 7, 1941, made deposits in the American branches of the Yokohama Specie Bank, Ltd. The property in the United States of this Japanese bank was vested as Japanese Enemy Property under the Trading with the Enemy Act, 50 U.S.C., App. § 1. After liquidation by state superintendents of banks, there remained approximately $17 million, which was turned over to the Office of Alien Property.

Congress, on August 8, 1946, enacted section 34 of the Trading with the Enemy Act, which authorized the Alien

Property Custodian[1] to pay from the proceeds of vested property the debts of former owners of the vested property that were due and owing on the vesting date. Congress excluded from the benefits of this statute, among others, individuals and their successors who had been interned or paroled as potentially dangerous alien enemies under the Alien Enemy Act, 50 U.S.C. § 21.

Acting under section 34(b) of the Trading with the Enemy Act, the Alien Property Custodian fixed November 18, 1949, as the final date for filing debt claims with the Custodian against the funds of the Yokohama Specie Bank, Ltd. Approximately ten thousand debt claims were timely filed, of which some seven thousand, five hundred were based on yen deposits. Appellants in the present cases all filed claims in the amount of their deposits during this period. The aggregate of the claims exceeded the seized assets of the bank, necessitating a processing of the claims under section 34(f) of the Act relating to insolvent debtors' estates. Claims of persons who had [fol. 72] been interned or paroled under the Alien Enemy Act (50 U.S.C. § 21) were dismissed because of the express provision of section 34(b) of the Trading with the Enemy Act (see Appendix A at 16-17), which excluded such persons from the status of eligible debt clainants. This action constituted the final disposition under the Act of the claims of the appellants in case number 19,283.

Extensive hearings before an Examiner were conducted, and ultimately, in 1957, the Alien Property Custodian ruled that the claims were allowable at the post-war rate of exchange of 361.55 yen to the dollar, under the "Judgment Day" rule of *Deutsche Bank* v. *Humphrey*, 272 U.S. 517 (1926), since the deposits were payable in yen in

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[1] By Executive Order No. 9788 (October 14, 1946, 11 F.R. 11981), the Attorney General succeeded to the powers and duties of the Alien Property Custodian. The term "Custodian" or "Office of Alien Property" will be used to refer to the Alien Property Custodian, or the Attorney General as successor, as the context may require.

Japan. Thereafter, identical registered letters were sent to all eligible claimants,[2] numbering some seven thousand, five hundred, stating that their claim could be allowed at the 361.55 rate and requesting that the claimants' original yen certificates be submitted to the Office of the Alien Property Custodian. This letter was received by all appellants represented in cases number 19,282 and 19,284. The claims of appellants in case number 19,283 had been rejected initially, as heretofore indicated, and they were not recipients of the letter. A copy of the registered letter appears in Appendix B of this opinion.

Some further summation of the contents of the letter received by the claimants is essential to a consideration of the contentions of appellants in the *Honda* (No. 19,284) and *Kondo* (No. 19,282) cases. The letter, in addition to the provisions set forth above, informed these appellants that they might, if they wished, file a statement of their objections to the application of the 361.55, or post-war, rate of exchange. The letter informed claimants that if [fol. 73] their original certificates were not submitted within the designated period, or if an explanation of why the certificates could not be submitted was not timely submitted, the claim would be dismissed as having been abandoned. The letter also set forth that a schedule of claimants would be drawn up from the names of persons submitting their original deposit certificates or explanations. Included in the letter was the statement that "[w]ithin sixty days after the issue of the schedule any aggrieved claimant may file in the District Court of the United States for the District of Columbia a complaint for review of such schedule, naming the Attorney General as defendant. If no complaint for review is filed, payments will be made in accordance with the schedule."

Thereafter, one thousand, eight hundred seventeen deposit claims against the Yokohama Specie Bank, for

[2] The record also indicates that counsel of record for at least claimant Ayako Honda, No. 19,284, was sent a copy of this letter.

which either original certificates of deposit or satisfactory evidence of loss had been submitted, were allowed at the rate of 361.55 yen to the dollar. Carrying out the provision of section 34(f) of the Act (see Appendix A at 17-18), the Alien Property Custodian prepared and served by registered mail on all claimants (*id est,* allowed and dismissed claims and including claimants in cases 19,282, 19,283 and 19,284) a Final Schedule of all debt claims allowed and the proposed payment to each claimant. Claimants whose claims had been dismissed, including appellants in the *Okamoto* case (No. 19,283) were not listed on the Final Schedule. Included with the notice transmitting the Final Schedule to each claimant was the statement:

> "Pursuant to Section 34(f) of the Trading with the Enemy Act, as amended, any claimant considering himself aggrieved by this Final Schedule may, within sixty (60) days from the date of the mailing of the Schedule, file in the United States District Court for the District of Columbia a complaint for review of this Schedule, naming the Attorney General as de- [fol. 74] fendant. A copy of such complaint must be served on the Attorney General and on each claimant named in the Schedule. If no such complaint for review is filed within the sixty-day period, payments to claimants will be made by this Office as specified in the Final Schedule."

A timely complaint for review of the award was brought in the United States District Court for the District of Columbia in 1961 asserting that the claims should have been allowed by the Custodian at the pre-war dollar rate of exchange for yen. This action (*Abe* v. *Kennedy,* C.A. 2529-61) was pursued in behalf of all Yokohama Specie Bank yen deposit claimants whose claims had been allowed on the Final Schedule. Proceedings in the *Abe* case were postponed, however, pending the outcome of a companion case, *Aratani* v. *Kennedy,* C.A. 3164-58, which had been

filed in 1958 and which related to the yen deposit claims which had been asserted against vested funds of the Sumitomo Bank, Ltd. The chronology and disposition of this case are set forth in the court's opinion published in 115 U.S. App. D.C. at page 97 and in 317 F.2d at page 161. The opinion affirming summary judgment in favor of the Government certainly invited *certiorari,* and on October 21, 1963, the Supreme Court granted *certiorari,* 375 U.S. 877. Before disposition by the Supreme Court, however, the Attorney General settled the Sumitomo Bank, Ltd. case on an exchange rate much more favorable to the claimants and simultaneously, or virtually so, settled the yen deposit claims on the Final Schedule of the Yokohama Bank case at a rate approximating a net return to the claimants of 49 per cent of the amount claimed. The settlements were approxed in the United States District Court for the District of Columbia on May 18, 1964,[3] 228 F.Supp. 706. After payment of the settlement sums, about [fol. 75] $10 million remains in the Yokohama Specie Bank, Ltd. account in the Office of Alien Property.

Against this background, the identity of the appellants in our present cases comes into sharper focus. In the *Kondo* (No. 19,282) and *Honda* (No. 19,284) cases, we have before us several thousand depositors in the Yokohama Specie Bank who, although recipients of the notices heretofore described as issuing from the Alien Property Custodian, declined or failed to file their original deposit certificates with the Custodian. Whatever reasons may have prompted or caused this action, these depositors were not listed on the Final Schedule for payment, were not represented in the court action entitled *Abe* v. *Kennedy, supra,* and were were not included in the settlement effectuated by the District Court approval of May 18, 1964. By actions filed in the District Court in the *Honda* case on May 19, 1964, and in the *Kondo* case on July 9,

[3] The Supreme Court thereafter dismissed the writ of *certiorari* in the *Aratani* case on March 9, 1965, 380 U.S. 938.

1964, these appellants sought to compel the Attorney General to pay to them on their deposits in the Yokohama Specie Bank a pro rata amount from the funds remaining in the Bank's vested account upon the same basis as was paid to the claimants in the *Abe* case. Similarly, in the *Okamoto* case, No. 19,283, in a complaint filed in the District Court on July 6, 1964, appellants, as depositors in the Yokohama Specie Bank whose claims were disallowed on the ground that they had been interned and paroled as alien enemies, seek a like portion of the remaining vested funds.

The District Court, on March 31, 1965, dismissed all three actions on the ground that the court lacked jurisdiction over the subject matter of the actions because they were not commenced within the time set forth in section 34(f) of the Trading with the Enemy Act (50 U.S.C. App. § 34(f)).

II

Appellants in the *Kondo* and *Honda* cases contend that [fol. 76] the District Court should have invoked equitable estoppel against the 60-day limitation period; that estoppel is applicable to suits arising under the Trading with the Enemy Act; that the sovereign immunity doctrine contains nothing warranting an implied exemption for the Government from the estoppel principle of *Glus* v. *Brooklyn Eastern District Terminal*, 359 U.S. 231 (1959); and exemption from the *Glus* estoppel doctrine creates a constitutional issue under the just compensation provisions of the Fifth Amendment. We treat first the presentation of these appellants.

III

Basing their first argument on a chronological treatment of the events transpiring between December 7, 1941 and March 31, 1965, these appellants argue that the 1958 letter of the Custodian to each claimant was a "discourage-

ment" and "insult" to the claimants, who had waited 17 years for the money seized by the vesting precedure. Concluding that the text of this letter was confusing, insulting and arbitrary, appellants argue that they were not told why their original certificates surrender was being demanded and why only two per cent of their deposits were being refunded, with a resulting inference that a surrender of the original certificate would constitute acquiescence in the two per cent formula and a waiver of further rights of the claimants. Appellants argue that their original certificates constituted their sole tangible remaining evidence of a claim, and because of illiteracy, language difficulties and other similar reasons they were reluctant to take any step which might either result in a loss of their claim or require them to accept a two per cent award. Accordingly, say this group, they awaited the outcome of the *Abe* v. *Kennedy* case "reasonably anticipa[ting] that if the two per cent formula which had long been in administrative litigation in *Abe* were reversed in the court all Yokohama [fol. 77] Bank depositors who had filed timely claims under the act which the Government had recognized as valid would be similarly compensated." Appellants conclude that their refusal to file their original deposit certificates and that their failure to sue or join in a suit while *Abe* was in litigation was "excusable delay" in view of their reasonable reliance upon the Government to treat them equally with claimants in the *Abe* case, especially since no prejudice accrued to the Government between 1961 and 1964 as a result of these appellants' inactivity.

In answer, the appellee points out that these actions arising under the Trading with the Enemy Act are suits against the Government. All conditions of the sovereign's consent to be sued must be complied with, and the failure to satisfy any such condition is fatal to the court's jurisdiction. Since the provision of section 34(f) of the Act creates a 60-day limitation upon the period in which a depositor may establish his status as a claimant or take other action, failure to meet this condition constitutes a

fatal failure to meet a prescribed condition precedent to the maintenance of the action.

There is no doubt that this action is a suit against the United States. *Banco Mexicano* v. *Deutsche Bank*, 263 U.S. 591, 602-3 (1924); *Codray* v. *Brownell*, 93 U.S. App. D.C. 112, 207 F.2d 610 (1953), *cert. denied* 347 U.S. 903 (1954). It is equally as well established that failure to satisfy the conditions of the United States' sovereign consent to be sued is fatal to the court's jurisdiction. *Brownell* v. *Nakashima*, 243 F.2d 787 (9th Cir.), *cert. denied* 355 U.S. 872 (1957); *Cisatlantic Corp.* v. *Brownell*, 131 F. Supp. 406 (S.D.N.Y. 1953), *affirmed* 222 F.2d 957 (2d Cir. 1955); *Von Clemm* v. *Smith*, 204 F.Supp. 110 (S.D.N.Y. 1962).

The 1958 letter attacked by appellants is set forth in the appendix of this opinion. (See Appendix B.) The ap- [fol. 78] pellee explains the necessity for requiring that the depositors submit their original certificates of deposit by pointing out that the certificates were redeemable to the holder by the banks in Japan, and in numerous cases had been so redeemed, and existence of the original certificates in the claimants' hands was essential to the establishment of an unsatisfied debtor status and in order to avoid double payment. The letter followed in meticulous detail and with painstaking care the requirements of the statute in notifying each of the thousands of depositors, not only of the Custodian's proposal but of the depositors' rights to file objections to the proposal and to initiate court action if they so desired. As heretofore set forth, the 60-day statutory limitation was set forth specifically and accurately. We question that the Custodian could more completely have outlined the significance of the proposal, creation and status of the forthcoming Final Schedule of Allowed Claims and the rights of the appellants under the statute. To characterize this letter as insulting requires an emotional approach unwarranted by the letter. That it was discouraging to its recipients is obvious. Those recipients were told, however, of the action

which they could take if they desired. In some instances, their attorneys were also informed. Their failure to act cannot, we feel, be attributed to any misrepresentation, either affirmatively or negatively, by the appellee. Whatever may have prompted the appellants' action, or lack of action, we conclude it was not any misleading act or inaction on the part of the Government.

IV

These appellants' contention that estoppel is applicable to suits arising under the Trading with the Enemy Act faces immediately our holding that "estoppel cannot be used against the Federal Government" in *Legerlatz* v. *Rogers,* 105 U.S. App. D.C. 256, 266 F.2d 457, 459 n.5 [fol. 79] (1959), *cert. dismissed,* 362 U.S. 938 (1960). That case also involved a suit for the return of vested property under the Act involved in the present case. Similar holdings may be found in *Anderegg* v. *United States,* 171 F.2d 127 (4th Cir. 1948), *cert. denied* 336 U.S. 967 (1949); *Wallace* v. *United States,* 142 F.2d 240 (2d Cir.), *cert. denied* 323 U.S. 712 (1944).

V

Next, these appellants reason that *Glus* v. *Brooklyn Eastern District Terminal, supra,* contains nothing warranting the conclusion that the appellee is excepted from the estoppel principle enunciated therein. We observe, first that the Government was not a party in the *Glus* case. Secondly, the *Glus* opinion is based upon an affirmative claim that the respondent had made a misrepresentation to the petitioner, thereby misleading him into a course of non-action. Utilizing the basic concept that no man may take advantage of his own wrong, the Supreme Court reversed in order to permit the petitioner to show whether he could, in fact, make out a case calling for the application of the doctrine of estoppel. The *Glus* case, however, does not pretend to announce any new or extended doc-

trine. Mr. Justice Black quotes in *Glus*, with approval, a statement of basic principle from *Insurance Company* v. *Wilkinson*, 80 U.S. (13 Wall.) 222, 233 (1871) wherein Mr. Justice Miller said:

> "The principle is that where one party has by his representations or his conduct induced the other party to a transaction to give him an advantage which it would be against equity and good conscience for him to assert, he would not in a court of justice be permitted to avail himself of that advantage. And although the cases to which this principle is to be applied are not as well defined as could be wished, the general doctrine is well understood and is applied by courts of law as well as equity where the technical advantage thus obtained is set up and relied on to defeat the [fol. 80] ends of justice or establish a dishonest claim."

We do not believe that the factual record before us permits a conclusion that the appellee "by his representations or his conduct induced" the appellants to give appellee any advantage. This being so, the question of whether the doctrine of estoppel restated in *Glus* is operative against the Government, or more specifically against this appellee, does not enter this case.

Insofar as appellants attempt to relate the estoppel principle of the *Glus* case, we refer back to the discussion of this factor in section II of this opinion and conclude that the record does not support appellants' contention on this point.

VI

Approaching their difficulties from the constitutional viewpoint, these appellants argue that the Fifth Amendment, in providing for due process, precludes the Government from any arbitrary or unreasonable intrusion upon private rights and requires that the Government be held to the highest standards of fairness and reasonableness, and they cite *Communist Party* v. *Subversive Activities*

Control Board, 351 U.S. 115 (1956); *Wong Yang Sung* v. *McGrath,* 339 U.S. 33 (1950); *Speiser* v. *Randall,* 357 U.S. 513 (1958), in support of this principle. Continuing, appellants charge that appellee's action with reference to their deposits in the Yokohama Bank constitutes a Government seizure of private property without judicial process. Citing *Central Union Trust Co.* v. *Garvan,* 254 U.S. 554, 566 (1921), the argument continues that the qualification of the alien property seizure therein is valid only "if adequate provision is made for a return in case of mistake" establishes a standard of "adequate provision," which because of the application of the 60-day limitation clause has not been met in this case.

[fol. 81] The appellee denies in rather general terms the existence of a constitutional issue in these cases.

The record supports the appellee's argument that the property taken and vested by the Custodian was the property of the Yokohama Specie Bank and not the property of the appellants. That deposits in banks become property of the bank and create a debtor-creditor relationship between bank and depositor is universally recognized. See *e.g., Anderson National Bank* v. *Luckett,* 321 U.S. 233 (1944); *Killoren* v. *First National Bank,* 127 F.2d 537 541 (C.C.A. 8th Cir. 1942); *Cicero State Bank* v. *Crowley,* 115 F.2d 1022 (C.C.A. 7th Cir. 1940). It follows that the property of the appellants—that is, the debt to them of the Yokohama Specie Bank—still belongs to appellants and has never been seized by the Custodian. The existence of this property in the control and possession of the appellants is further emphasized by the fact, heretofore pointed out, that each appellant may recover in Japan from the Yokohama Specie Bank on the basis of his original deposit certificate, albeit at a rate of exchange not pleasing or acceptable to him.

The constitutional question may be viewed from another viewpoint. Appellants are creditors of a wartime enemy commercial enterprise. The American-based assets were legally vested by valid Act of Congress. Thereafter, as a

matter of grace, Congress, by enacting section 34 of the Act, conferred upon certain creditors of enemy enterprises a means of attempting to recover upon their claims from those assets of the debtor which were held by the Custodian. The action did not, however, create a constitutional right in the creditors to recover. The practical effect of section 34 is to provide a means of pro rata distribution of vested funds among those claimant-creditors who are able under the statute to establish their right to this recovery. Certainly, the creditors have not acquired by section 34 of the Act a property right in vested funds. [fol. 82] We conclude that the appellants have not been deprived of any constitutional right by the appellee in these proceedings.

VII

Turning now to the *Okamoto* case, we recall that this group of appellants are the depositors in the Yokohama Specie Bank whose claims were rejected by the appellee because these people had been interned and paroled and were, consequently, barred by the statute from recovery of their deposits. It is argued on behalf of these appellants that the Government, to their detriment, is taking an inconsistent and consequently illegal position by first claiming the Trading with the Enemy Act created no rights for appellants and "does not apply to them," in permitting the processing of their deposit claims but later claiming that the Act's 60-day limitation clause does apply to appellants when they seek through the courts to press their suit. On this basis, these appellants, relying on *Interstate Commerce Comm'n.* v. *United States ex rel. Humboldt Steamship Co.*, 224 U.S. 474 (1912), argue that the courts have authority in this case by mandamus to compel the Custodian to accept the claims of appellants and to proceed to the merits of their claim. In advancing this argument, the appellants emphasize the distinction between the exercise of an agency's discretionary power and a denial of power from a misunderstanding of the law.

Our review of the *Humboldt Steamship Co.* case establishes a vital distinction from the situation that confronts us here. In *Humboldt*, the Interstate Commerce Commission "refused to proceed at all, though the law required it to do so," 224 U.S. at 485. Here, the Custodian exercised jurisdiction initially over these appellants' claims. The claims were reviewed and dismissed on the ground of ineligibility of the claimants under the provisions of the Act. Jurisdiction was exercised, and it was adverse to [fol. 83] appellants. Under these circumstances, proceedings in the nature of mandamus will not lie. But, say these appellants, mandamus will lie where " • • • the erroneous decision cannot be reviewed on appeal of writ of error," citing *Louisville Cement Co. v. Interstate Commerce Comm'n.*, 246 U.S. 638, 643 (1918). Unfortunately for this approach, we have in the present case statutory provision for review of the Custodian's action in rejecting the claims of these appellants. Section 34(f) of the Act provides a remedy which is an exclusive one and one which the claimants failed to utilize, although complaint for review was brought by a similarly situated depositor in another vested Japanese bank case. See *Sasaki* v. *Rogers*, 185 F.Supp. 191 (D.D.C. 1960).

A further contention of this group of claimants is that the Fifth Amendment prevents dismissal of their claims. Again, the short—and we think obvious—answer to this argument is that if the appellants desired to contest the constitutionality of the eligibility provisions of section 34 (a) of the Act, they could, and should, have filed a timely complaint for judicial review.

VIII

We conclude upon the entire record in all three cases that the District Court acted correctly in dismissing these cases on March 31, 1965.

IX

The unique and unfortunate circumstances which have deprived these appellants of their deposits in the Yokohama Specie Bank command sympathetic consideration of their problem. Arguments made to the court were broadly spiced with a strong emotional appeal. Appellants' sincere counsel valiantly attempted under the label of "equitable considerations" to lead the court to abandon established legal principles and upon purely humane [fol. 84] grounds return to the appellants the funds which represented their savings on December 7, 1941. Benevolence is a noble virtue, but it cannot be a foundation for legal opinions, regardless of the need of the litigant or the strictly emotional appeal of his plight. It is not for the courts to turn their backs upon legal principles, precepts and established law in order to accomplish an end which is suggested by a desire to accomplish a humane objective. To do so would immediately constitute the creation of a program of judicial legislation in complete disregard of our constitutional limitations and separation of powers. Obviously, Congress, enacting into law the will of the people, must write our country's laws. The dangers of wartime, the military and economic problems of the early 1940's, are far behind us. Perhaps now the necessities that required the enactment of the Trading with the Enemy Act have so far passed into history that Congress may wish to reconsider the status of these appellants and another disposition of their claims. It is not for the court to suggest to Congress what it should or should not do. We suggest only that the relief sought by these appellants lies solely in legislative hands.

Affirmed.

Appendix A

Section 34 of the Trading with the Enemy Act, 60 Stat. 925 (1946), 50 U.S.C. App. § 34 (1951).

Sec. 34(a). Any property or interest vested in or transferred to the Alien Property Custodian (other than any property or interest acquired by the United States prior to December 18, 1941), or the net proceeds thereof, shall be equitably applied by the Custodian in accordance with the provisions of this section to the payment of debts owed by the person who owned such property or interest immediately prior to its vesting in or transfer to the Alien [fol. 85] Property Custodian. * * * Debt claims allowable hereunder shall include only those of citizens of the United States or of the Philippine Islands; those of corporations organized under the laws of the United States or any State, Territory, or possession thereof, or the District of Columbia or the Philippine Islands; those of other natural persons who are and have been since the beginning of the war residents of the United States and who have not during the war been interned or paroled pursuant to the Alien Enemy Act; * * *

Sec. 34(b). The Custodian shall fix a date or dates after which the filing of debt claims in respect of any or all debtors shall be barred, and may extend the time so fixed, and shall give at least sixty days' notice thereof by publication in the Federal Register. * * *

Section 34(f). If the aggregate of debt claims filed as prescribed exceeds the money from which, in accordance with subsection (d) hereof, payment may be made, the Custodian shall prepare and serve by registered mail on all claimants a schedule of all debt claims allowed and the proposed payment to each claimant. In preparing such schedule, the Custodian shall assign priorities in accordance with the provisions of subsection (g) hereof. Within sixty days after the date of mailing of such schedule, any claimant considering himself aggrieved may file in the District Court of the United States for the District of

Columbia a complaint for review of such schedule, naming the Custodian as defendant. A copy of such complaint shall be served upon the Custodian and on each claimant named in the schedule. The Custodian, within forty-five days after service on him, shall certify and file in said court a transcript of the record of proceedings in the Office of Alien Property Custodian with respect to such schedule. Upon good cause shown such time may be extended by the court. Such record shall include the claims in question as filed, such evidence with respect thereto as may have been presented to the Custodian or introduced into the record by him, any findings or other determinations made by the Custodian with respect thereto, and the schedule prepared by the Custodian. The court may, in its discretion, take additional evidence, upon a showing that such evidence was offered to and excluded by the Custodian [fol. 86] or could not reasonably have been adduced before him or was not available to him. Any interested debt claimant who has filed a claim with the Custodian pursuant to this section, upon timely application to the court, shall be permitted to intervene in such review proceedings. The court shall enter judgment affirming or modifying the schedule as prepared by the Custodian and directing payment, if any be found due, pursuant to the schedule as affirmed of modified and to the extent of the money from which, in accordance with subsection (d) hereof, payment may be made. Pending the decision of the court on such complaint for review, and pending final determination of any appeal from such decision, payment may be made only to an extent, if any, consistent with the contentions of all claimants for review.

Appendix B

(J.A. 6)

Exhibit A

Registered Mail
Return Receipt Requested

Ayako Honda
1576 Valota Road
Redwood City, California

Dear Sir:

Reference is made to the above-numbered debt claim which has been filed with this Office with respect to the insolvent account of the Yokohama Specie Bank, Ltd. The claim is based upon yen certificates of deposit.

The Director of this Office decided on November 13, 1957, *In the Matter of Kunio Abe, et al.*, Claim No. 55507, Docket No. 55 D 72, which decision the Attorney General has declined to review, that yen certificates of deposit issued by the Yokohama Specie Bank, Ltd., and the Sumitomo Bank, Ltd. are obligations payable in yen in Japan, and that claims based on such certificates of deposit are to be allowed and paid in United States currency at the post war rate of exchange in accordance with the "Judgment Day" rule set forth in *Deutsche Bank* v. *Humphrey*, 272 U.S. 517 [fol. 87] (1926). Thus, the current rate of exchange of 361.55 yen to one dollar must be used in converting the yen into a dollar amount. Interest is allowable from the date of deposit to the date of payment.

Therefore, if you submit your original certificates of deposit to this Office, I can recommend your claim for allowance in the sum of $9.09 plus interest. If you have lost your certificates, you should prepare a statement setting out that the deposits were made as alleged in the Notice of Claim form, giving the numbers of the certificates, the dates of the deposits, and the branch of the Bank at which the certificates were purchased. You should also

state that you have not received payment from the Bank or accepted renewed certificates of deposit. This statement should be signed and sworn to by you before a Notary Public and forwarded to this Office in support of your claim.

(J.A. 7)

Payment of your claim, however, will not be made immediately. Under the procedures set forth in section 34(f) of the Trading with the Enemy Act, as amended (50 U.S.C. App. 34(f)); it is necessary that all of the approximately 9000 claims filed against the Yokohama Specie Bank, Ltd. be reviewed and a schedule issued showing the proposed payments before any payments can be made. Within sixty days after the issuance of the schedule, any aggrieved claimant may file in the District Court of the United States for the District of Columbia a complaint for review of such schedule, naming the Attorney General as defendant. If no complaint for review is filed, payments will be made in accordance with the schedule.

Advice received by this Office is to the effect that yen certificate of deposit accounts are carried on the books of the Yokohama Specie Bank, Ltd. in Japan, and the funds may be withdrawn in that country or transferred to the Bank of Tokyo, Ltd. Under the circumstances, you may wish to utilize the funds in Japan rather than await settlement by this Office. If this is done, the Notice of Claim filed with this Office should be canceled by signing and mailing the enclosed Notice of Cancellation of Claim card.

[fol. 88] If, however, you wish to maintain your claim with this Office you are requested to submit the original certificates of deposit or the notarized statement as to why they cannot be forwarded. In the event you object to the allowance of your claim in the amount stated above, you should submit the certificates to this Office within the next forty-five days and file a statement specifying your objections, together with the reasons in support thereof. Upon receipt of your objections, if I consider them to be without merit, I

shall apply to the Director of this Office, pursuant to section 502.25(1) of the Rules of Procedure for Claims, a copy of which is enclosed, for the entry of an Order allowing your claim in the principal amount stated above, plus interest, and dismissing any portion over and above that amount on the ground that there is no debt due and owing to you by the Yokohama Specie Bank, Ltd. in excess of that amount. In acting upon my application, the Director will consider the statement of objections that you may have submitted.

(J.A. 8)

On the other hand, if within the next forty-five days you do not submit the original certificates of deposit or a statement explaining why they cannot be forwarded, I shall conclude that the claim has been abandoned in its entirety and, without further notice to you, shall apply to the Director for the entry of an Order dismissing the claim on the ground of abandonment, pursuant to section 502.25(g) and (i) of the Rules of Procedure for Claims.

To recapitulate:

1. If you wish to maintain your claim with this Office, you should within forty-five days forward the original certificates of deposit and, if you wish to do so, file a statement of your objections to the allowance of the claim in the amount stated above.

2. If you wish to maintain your claim but do not have the original certificates of deposit, you should within forty-five days submit a statement, signed and sworn to before a Notary Public, giving the details of the deposits and stating that you have not received payment or renewed certificates. If you wish to do so, you may also file a statement of your objections to the allowance of the claim in the amount stated.

[fol. 89] 3. I shall then apply to the Director for an Order allowing your claim in the principal amount stated above, plus interest, and dismissing any portion over and above that amount. Where objections have been filed, they will be

submitted to the Director for his consideration in acting upon your claim.

4. If, within forty-five days, you do not submit the original certificates of deposit or an explanation as to why you cannot forward them, I shall conclude that the claim has been abandoned and shall apply to the Director for an Order dismissing the claim on that ground.

5. If you prefer to utilize the funds in Japan, you should sign and mail the enclosed Notice of Cancellation of Claim card in order to clear the records of this Office.

(J.A. 9)

Please note that the original certificates must be submitted; photostatic copies cannot be substituted.

Sincerely yours,

ARTHUR R. SCHOR
Chief, Claims Section,
Office of Alien Property.

Enclosures

cc: Wirin, Rissman & Okrand,
257 South Spring Street,
Los Angeles 12, California.

WRIGHT, Circuit Judge, dissenting: I agree with the court that these cases command sympathetic consideration for these many thousands of Japanese-American appellants. Respectfully, I dissent from the court's conclusion that we are powerless to provide relief.

Appellants were depositors of the Yokohama Specie Bank, Ltd. when the bank's property in the United States was seized on Pearl Harbor Day and vested as enemy [fol. 90] property under the Trading with the Enemy Act, 50 U.S.C.App. §§ 1 *et seq.*, 40 STAT. 411. On August 8, 1946, Congress enacted § 34 of the Trading with the Enemy Act, 60 STAT. 925, which authorized the Alien Property Cus-

todian to pay from the vested proceeds the claims of former owners who were citizens or residents of the United States during World War II and who had not been interned or paroled as potentially dangerous alien enemies. Pursuant to § 34(b) of the Act, the Custodian fixed November 18, 1949, as the final date for filing claims against the Yokohama Bank. Appellants in *Honda,* No. 19,284, *Kondo,* No. 19,282, and *Okamoto,* No. 19,283, all filed timely claims. The Government refused to recognize the claims of appellants in *Okamoto* on the ground they were ineligible under the statute because they had been interned and paroled. This ruling was correct and disposes of that case.[1]

The claims of appellants in *Honda* and *Kondo* were recognized by the Custodian, however, to the extent that toward the end of 1958 they were sent letters as eligible claimants, instructing them to send in their original certificates of deposit or equivalent proof and informing them that if proper proof were submitted a recommendation would be made that their claims be allowed at the post-war rate of exchange, which amounted to approximately 2% of the pre-war rate. Appellants were further advised that any claim not timely submitted would be dismissed as [fol. 91] abandoned. Appellants failed to comply with the requirements of the 1958 letter.

Around September 1961 the Custodian prepared and sent by registered mail to all claimants a Final Schedule of all Yokohama Bank depositor claims allowed and the proposed payment in each case. A Notice was included advising that "[i]f your claim is not shown on the Schedule, it is for the reason that the claim has been dismissed and disallowed by this Office"; that any claimant considering himself aggrieved "may, within sixty (60) days" file

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[1] *Interstate Commerce Com'n* v. *Humboldt Steamship Co.,* 224 U.S. 474 (1912), is inapposite. In *Humboldt,* the I.C.C. "refused to proceed at all, though the law required it to do so." *Id.* at 485. Here, the Custodian exercised jurisdiction over these claims and denied them on the merits. Congress acted within its power when it excluded these appellants, non-citizens at the time of seizure, from the relief the statute affords. *Masami Sasaki* v. *Rogers,* D.D.C., 185 F.Supp. 191 (1960).

for judicial review; and that "[i]f no such complaint for review is filed within the sixty-day period, payments to claimants will be made" in accordance with the Schedule. Appellants did not file for judicial review within 60 days of the letter, as required by § 34(f) of the Act.

In *Abe* (pronounced "Ah-bey") v. *Kennedy*, a timely complaint, demanding payment at the pre-war rate, was filed in the District Court on behalf of all Yokohama Bank claimants who had complied with the Custodian's 1958 letter. Proceedings in *Abe* were stayed pending the outcome of *Aratani* v. *Kennedy*, which involved the same issue with depositors of a different Japanese bank.

The District Court granted the Government's motion to dismiss in *Aratani*, this court affirmed, 115 U.S.App. D.C. 97, 317 F.2d 161, 323 F.2d 427, and the Supreme Court granted *certiorari*, 375 U. S. 877 (1963). The Government then entered into a settlement with complainants in *Aratani* and *Abe*, which was referred to the District Court by the Supreme Court, 376 U.S. 936 (1964), and approved in 1964, D.D.C., 228 F.Supp. 706. The *Abe* settlement was for well over 60% of the amount claimed, and in fact came to approximately 100% of the original deposits without interest.[2] [fol. 92] Appellants' petition to be included in the settlement was denied by the Government on the ground that they were not parties to the litigation being compromised. They then brought these actions. The District Court granted a Government motion to dismiss for lack of jurisdiction because the complaints were filed long after the 60-day limitation period prescribed by the Act. This appeal challenges the dismissal.

I

Appellants urge us, under the circumstances of this case, to estop the Government from asserting the 60-day stat-

[2] The Government's statement implies that the settlement was for 49% of the amount claimed. Actually, 49% is the amount paid over to the claimants—*i.e.*, the total award less 20% for attorneys' fees. Brief for Respondent, p. 7.

ute of limitations. In addition to denying that any basis for estoppel is shown, the Government advances two arguments which would bar consideration of the plea.

The Government argues first that estoppel cannot be applied against it. It may be true that estoppel does not lie against the United States where its officers or agents, without authority, enter into agreements to do what the law does not sanction or permit. *E.g., Federal Crop Ins. Corp.* v. *Merrill,* 332 U.S. 380 (1947); *United States* v. *Stewart,* 311 U.S. 60, 70 (1940). Compare Maguire & Zimet, *Hobson's Choice and Similar Practices in Federal Taxation,* 48 HARV. L. REV. 1281, 1299 (1935). But when the conduct relied upon as the basis for estoppel is authorized, estoppel has often been applied against the Government by a number of courts, including this one.[3] Here,

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[3] *Stockstrom* v. *Commissioner of Internal Revenue,* 88 U.S.App.D.C. 286, 190 F.2d 283 (1951); *Vestal* v. *Commissioner of Internal Revenue,* 80 U.S.App.D.C. 264, 152 F.2d 132 (1945). Berger, *Estoppel Against the Government,* 21 U. CHI. L. REV. 680, 687-688 (1954):

> "However the case may be with respect to 'unauthorized' conduct, estoppel clearly may be based upon 'authorized' conduct. From the Supreme Court's oft-repeated formulation of the immunity from estoppel in terms of administrative action that 'the law does not sanction or permit,' it may be inferred that government is bound by actions within the scope of the agent's authority. A steadily growing number of federal courts have properly so held, for the sole tenable argument for the immunity derives from separation of powers considerations which have no play where administrative action is *authorized* by Congress. In such case the government should be and is estopped." (Emphasis in original.)

In holding that estoppel cannot be applied against the Government, the majority ignores these authorities. The statement in *Legerlotz* v. *Rogers,* 105 U.S.App.D.C. 256, 258 n.5, 266 F.2d 457, 459 n.5 (1959), relied on by the majority that estoppel does not lie against the Government, is dictum and arose in a context which clearly precluded application of the doctrine. The Attorney General had sent plaintiff a Notice of Intention to return a certain sum seized during the war, but later decided to retain a part of the sum involved. Plaintiff, allegedly in reliance upon the Notice, failed to bring suit within the two years prescribed by statute. But the

[fol. 93] admittedly, the officers who communicated with appellants and who formulated the policy which resulted in the 1958 offer and the 1963 settlement all acted within their authority.

The Government's second argument, that the 60-day limitation period for judicial review provided in the Act is "substantive" rather than "procedural" and therefore cannot be extended, is likewise unfounded. The suggestion seems to be that, since the limitation provision is included in the same Act which creates the right, the passage of time itself extinguishes the right. The Supreme Court rejected this argument in ruling that estoppel may prevent a private party from pleading the "substantive" limitation period of the Federal Employers' Liability Act. *Glus* v. *Brooklyn Eastern Terminal*, 359 U.S. 231 (1959). [fol. 94] See also *United States* v. *Price-McNemar Construction Co.*, 9 Cir., 320 F.2d 663 (1963) (estoppel applied in favor of the Government in Miller Act case despite "substantive" statute of limitations). More recently, also in tolling the FELA limitation period, the Supreme Court said: "[T]he 'substantive'-'procedural' distinction would seem to be of little help in deciding questions of extending the limitation period." *Burnett* v. *New York Central R. Co.*, 380 U.S. 424, 427 n.2 (1965). "[T]he basic inquiry is whether congressional purpose is effectuated by tolling the statute of limitations in given circumstances." *Id.* at 427. Of course, Congress can make a limitation period inflexible, but in order to do so it must do more than merely place the limitation and the right in the same statute.

In deciding that the limitation period in FELA was not inflexible the Supreme Court, in *Burnett*, examined "the purposes and policies underlying the limitation provision, the Act itself, and the remedial scheme developed for the enforcement of the rights given by the Act." 380

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court pointed out that the statute specifically provided that a Notice of Intention conferred no right of action to compel the return of property; the provision's purpose was to leave the Attorney General with the power freely to change his mind.

U.S. at 427. These cases meet the test of *Burnett*. There are no problems of notice or proof. Appellants' claims, which the Government concedes are valid, were timely filed with the Custodian before 1949. The "Act itself" is remedial and humane. It was passed at the Custodian's urgent request, in part for the benefit of the Government, and was designed to return to rightful creditors on an equitable basis, rather than according to a "first come, first served" rule, assets kept out of enemy hands.[4] Both [fol. 95] Congress and the Custodian recognized the strong moral obligation owed to rightful creditors.[5] Certainly any application of equitable principle permissible under FELA, which is designed purely to benefit employees, is permissible here, where the Government also benefited, and where a strong moral obligation was recognized.

Moreover, there is nothing in the Act's "remedial scheme" which indicates congressional intent to limit or preclude equitable extension of the limitation period. Section 34(f)

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[4] The Supreme Court held, in *Markham* v. *Cabell*, 326 U.S. 404 (1945), that creditors or allies of enemies whose property had been seized by the Custodian during World War II may maintain suits against the Custodian on their debt claims under the Trading with the Enemy Act § 9(a), although that section appeared to apply only to World War I seizures. This resulted in a "first come, first served" rule—a race of creditors which exhausted properties without equitable distribution—and in serious interference with the use of the property to the best interests of the United States. Congress acted promptly. Within one year, § 34 was passed at the Custodian's urgent recommendation, providing for the equitable distribution of vested property by disallowing independent suits and by setting up a procedure whereby all claims could be considered and disposed of together. H.R.Rep. No. 2398, 79th Cong., 2d Sess. (1946).

[5] "The Custodian has emphasized to the committee that he is anxious to satisfy the proper claims of creditors and the committee concur in the view that there exists a strong moral obligation to satisfy them inasmuch as, but for the vesting of their debtors' property, they would presumably have been able to pursue ordinary remedies against the debtors." H.R.Rep. No. 2398, *supra* Note 4, at p. 10.

does set out the 60-day requirement, but this only poses the issue rather than answers it.[6] Neither does § 34(i), which provides that the sole relief for vested property claimants shall be that provided in the Act, indicate congressional intention to make the limitation period inflexible. This provision was designed only to prevent independent suits for recovery of property.[7] Speed in resolving all [fol. 96] claims was a matter of importance to Congress, but only as it related to the general purpose of effectuating an equitable distribution. Thus § 34(b) ordered the Custodian to fix "bar dates" within which debt claims could be filed, no later than two years from the date of vesting or of enactment. This enabled the Custodian to determine at one time which claimants were eligible, and to distribute each account equitably. Appellants complied with this fundamental requirement.[8] The 60-day limitation with which they failed to comply can hardly be said to constitute

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[6] The FELA provision, 45 U.S.C. § 56, if anything, is more absolute: "No action shall be maintained under this chapter unless commenced within three years from the day the cause of action accrued."

[7] As pointed out *supra*, Note 4, passage of the present § 34 of the Act was generated by the Supreme Court ruling that creditors could sue, necessarily on a "first come, first served" basis, under § 9(a). The committee report makes clear that § 34(i) was passed to preclude § 9(a) suits:

> "Section 35(i) [now 34(i)] is generally procedural in nature. It provides that the debt claim provisions of the bill shall constitute the sole relief of creditors, except for their right to sue the original debtor or any other person liable. It is expressly provided that debt claim suits heretofore filed under section 9(a) shall not be continued and only suits to review the Custodian's determination under the bill are maintainable with respect to debt claims. This is believed necessary to the effective operation of the debt claim provisions of the bill. * * *" H.R.Rep. No. 2398, *supra* Note 4, at p. 15.

[8] It is upon non-compliance with the similarly fundamental requirement of § 33 of the Act that the cases cited by the Government are based. See, *e.g.*, *Brownell* v. *Morizo Nakashima*, 9 Cir., 243 F.2d 787, *cert. denied*, 355 U.S. 872 (1947).

a fundamental and inflexible part of the Act's remedial scheme.[9]

[fol. 97] Reiterating the old aphorism—"The failure to satisfy the conditions of the sovereign's consent to be sued is fatal to the court's jurisdiction"—the Government argues, however, that equitable principles may not be used to vary the literal terms of the sovereign's consent. But neither reason nor authority is advanced to show why the approach taken in *Glus* and *Burnett* in determining whether a "substantive" limitation period is inflexible should not apply in suits against the Government. In fact, *Burnett* cited with approval[10] *Osbourne* v. *United States*, 2 Cir., 164 F.2d 767 (1947), which involved claims against the Government under the Suits in Admiralty Act and against a private employer under the Jones Act. The court in *Osbourne* tolled the "substantive" limitation periods of both statutes without discussing any possible difference between them. If equitable principles may be applied to extend the limitation period for a claim against the Government which

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[9] The suppletive nature of the requirement makes it analogous to the 60-day reporting requirement in *N. V. Philips' Gloeilampenfabrieken* v. *Atomic Energy Com'n*, 114 U.S.App.D.C. 400, 316 F.2d 401 (1963). There, petitioners owned certain foreign patents which were divulged to the United States Government in connection with Project Manhattan and were widely used. The Patent Compensation Board rejected petitioners' claim for "just compensation" on the ground that petitioners had failed to file a report describing the processes of their inventions within 60 days of the passage of the statute conferring a right to compensation. We looked to the purpose of the requirement and found, not a mechanical reporting process, but a means for assuring disclosure. It was conceded that the A.E.C. had the relevant information. We concluded: "Under the circumstances of this case, the Commission should not be allowed to seize upon this technicality to avoid a responsibility which the Congress recognized." 114 U.S.App.D.C. at 408, 316 F.2d at 409. Since in these cases the Custodian knew of appellants' claims and could include them in his computations in equitably distributing the Yokohama property, the failure to file for review in time did not interfere with the basic purpose of the Act.

[10] 380 U.S. at 427.

would have to be satisfied from the federal treasury, as in *Osbourne*, no reason appears why such principles should not be applicable in suits against the United States where the claims are to be satisfied only from vested funds of the Yokohama Bank.

II

[fol. 98] The Government's opposition on the merits to the plea of estoppel is predicated on a rigid and mechanical approach to that doctrine. Estoppel is a "simple and wholly untechnical conception, perhaps the most powerful and flexible instrument to be found in any system of court jurisprudence." Statement of Sir Frederick Pollock, quoted in *Canada and Dominion Sugar Co. Ltd.* v. *Canadian National Steamships, Ltd.*, [1947] A.C. 46, 55. It should be neither rigidly circumscribed nor mechanically applied.[11] This does not mean courts are free to apply estoppel indiscriminately. The fundamental requirements —a representation, reliance, change of position, detriment —must be met.[12] But once these elements are present, the novelty of a particular case should not deter courts from using the device to do justice.

The facts of this case reveal a combination of circumstances and procedures which have operated to bring about a potential injustice of substantial proportion. Appellants all filed timely claims. They could have obtained the post-war ratio for their deposits at any time at the Yokohama Bank in Japan. They did not. Rather, they held on to their certificates of deposit, hoping their own government, applying the beneficent provision of the Act, would treat them more fairly. But in 1958, after waiting 12 years to cash their deposit certificates, the Custodian informed them their recovery would be limited to the post-war ratio.

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[11] Courts have refused to follow rigid definitions of the doctrine. See generally Berger, *op.cit.supra* Note 3; Dawson, *Estoppel and Statutes of Limitation*, 34 MICH. L. REV. 1 (1935); Lynn & Gerson, *Quasi-Estoppel Applied Against the United States in Federal Tax Controversies*, 19 TAX L. REV. 487 (1964).

[12] See 3 POMEROY, EQUITY JURISPRUDENCE § 805 (5th ed. 1941).

[fol. 99] Many of the appellants undoubtedly could not understand the Custodian's technical letter. But even if we assume they could, it seems certain the letter discouraged them from filing their certificates. The ratio offered rendered their small deposits almost completely worthless. A $500 creditor suddenly found he might be entitled to $10. Moreover, the letter pointed out that "[p]ayment of your claim, however, will not be made immediately," because it remained necessary to compile a Final Schedule (which took approximately three years). The letter then advised, however, that claimants could receive the same rate in Japan without going through as much trouble: "Under the circumstances, you may wish to utilize the funds in Japan rather than await settlement by this Office."

The 1958 letter unquestionably contained an authorized representation of fact—that it was the Government's position that payment should be made at the post-war rate. This representation was relied upon by appellants when they failed to file their certificates, knowing full well they could get the same rate at any time in Japan. The Government knew reliance might follow, and encouraged such reliance by suggesting Japan as an alternate, speedier source of funds. That only 1,817 of about 7,500 eligible claimants complied with the letter is strong evidence of its effect.

It turns out, however, that the Government's position changed. When the Supreme Court granted *certiorari* in *Aratani*, the Government settled the cases on a basis completely at variance with its original position. The power of the Government to take its 1958 position, and to change its position in 1963, is incontestible. But the exercise of this power cannot become a means, whether intentional or inadvertent,[13] whereby innocent persons who acted in reli-

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[13] See *Peters* v. *St. Paul Fire & Marine Insurance Company*, S.D. N.Y., 213 F.Supp. 441, 442 (1963):

> "Where one party induces another to delay in bringing suit so that an applicable period of limitation expires, he may be

[fol. 100] ance upon the Government's first representation should be denied the opportunity to recoup moneys which Congress wanted returned. The pattern of events—the letter which discouraged filing of certificates because of the position taken therein, the failure of the vast majority of claimants to file certificates, the subsequent change of position and settlement, the exclusion of appellants from the benefits of the change of position—could hardly have been better designed to secure exclusion of most claimants from the relief Congress afforded them, and from the relief to which the Office of Alien Property now apparently agrees they were always entitled.

We have here a remedial and humane piece of legislation designed to secure the equitable return of property to American citizens. The purposes of the limitation period have been satisfied, and nothing in the Act's remedial scheme limits or precludes equitable extension of the limitation period. The Yokohama Bank account, with over $10,000,000 in cash, has more than enough to pay appellants the same rate paid the claimants in *Abe*. Under these circumstances, the Government should not be permitted to assert the statute of limitations as a bar to the suit. Appellants should be allowed to take advantage of the Government's new position.

I respectfully dissent.

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estopped from asserting such expiration in defense even though the inducement to delay was done innocently or unintentionally. * * *"

See also *Romano* v. *Metropolitan Life Ins. Co.*, 271 N.Y. 288, 2 N.E.2d 661 (1936).

[fol. 101]

IN THE UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1965

Civil 1630-64

No. 19,282

MASAE KONDO, et al., Appellants,

v.

NICHOLAS DEB. KATZENBACH, Attorney General of the United States, Appellee.

Civil 1591-64

No. 19,283

MASARU OKAMOTO, et al., Appellants,

v.

NICHOLAS DEB. KATZENBACH, Attorney General of the United States, Appellee.

Civil 1179-64

No. 19,284

AYAKO HONDA, et al., Appellants,

v.

NICHOLAS DEB. KATZENBACH, Attorney General of the United States, Appellee.

Appeals from the United States District Court for the District of Columbia.

Before: Danaher, Wright and Tamm, Circuit Judges.

JUDGMENT—January 13, 1966

These cases came on to be heard on the records on appeals from the United States District Court for the District of Columbia, and were argued by counsel.

On Consideration Whereof, it is ordered and adjudged by this court that the orders of the District Court on appeal in these cases are affirmed.

Per Circuit Judge Tamm.

Separate dissenting opinion by Circuit Judge Wright.

[File endorsement omitted]

[fol. 102]

IN THE UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1965

No. 19,282

[Title omitted]

No. 19,283

[Title omitted]

No. 19,284

[Title omitted]

Before: Bazelon, Chief Judge; and Fahy, Danaher, Burger, Wright, McGowan, Tamm, and Leventhal, Circuit Judges, in Chambers.

[File endorsement omitted]

[fol. 103] ORDER—Filed February 24, 1966

On consideration of appellants' petition for rehearing *en banc*, it is

Ordered by the court *en banc* that appellants' aforesaid petition is denied.

Per Curiam.

Circuit Judge Wright would grant appellants' aforesaid petition.

[fol. 104] CLERK'S CERTIFICATE TO FOREGOING TRANSCRIPT (omitted in printing).

[fol. 105]

SUPREME COURT OF THE UNITED STATES

No. 164—October Term, 1966

AYAKO HONDA, et al., Petitioners,

v.

NICHOLAS DEB. KATZENBACH, Attorney General of the United States.

ORDER ALLOWING CERTIORARI—October 24, 1966

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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